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Grassroots Poverty and Grassroots Human Rights: Grounding Theory in Practice

A Capstone Project Submitted in Partial Fulfillment of the
Requirements of the Renée Crown University Honors Program at
Syracuse University

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Abstract

Philosophical discourse on human rights is broad and contested, and not all of it agrees with human rights practice. None of the common philosophical problems, such as the reconciliation between theory and human rights law, the debate between civil-political and socio-economic rights, or even what sort of thing human rights are, has been answered definitively. What is uncontested, however, is the fact that human rights are far from fulfilled in the world today, as world poverty and inequality persist into the 21st century.

A recent trend across the board—from philosophy to development studies to human rights practice—is to view poverty as a human rights issue, and see how the often-divergent idioms of human development and human rights might converge. This project aims not to solve this problem definitively or answer any question like “what are human rights.” Instead, it takes poverty and human suffering as a starting point, and asks what a conception of human rights needs to look like in order to focus on them. Three approaches to human rights theory are discussed. I begin with an analysis of Thomas Pogge’s project to make poverty-centered human rights amenable to libertarian-flavored views about redistributive duties. A complex empirical argument is required for his theory to give any real result, and this seriously constrains the practical efficacy of his approach.

Mathias Risse articulates the problems with Pogge’s account, and offers an innovative conception of human rights informed by development practice. I introduce his arguments against Pogge, including his “institutional thesis” that development and aid are restricted by how they can influence domestic institutions, and conclude that a middle ground between the two views is possible. Risse offers a useful four-part schema for thinking about human rights, but his construal of human rights as membership rights raises serious concerns about his reliance on an overly innovative idea of common ownership of the Earth and a potentially misguided conception of the global order.

Out of the dialectic between these two innovative human rights conceptions, I turn to a more orthodox view based on Martha Nussbaum and Amarta Sen’s idea of capabilities. I hold that such an approach, while perhaps open to some standard objections, may be the only way to ground a poverty-focused human rights that reliably unifies development and human rights practitioners. The responsibilities discharged by such an approach focus on capacity building through grassroots support, encourage this as an international concern, and see human rights as guides for domestic policy. To rely on a neo-Aristotelean thesis is ultimately unsatisfying with regards to many philosophical issues, but we can accept this based on a notion of sentimentality and a desire to preserve the strengths of human rights discourse as it is.

I close the paper with a brief account of recent rights-based legislation in India. The National Rural Employment Guarantee Act guarantees every rural household a minimum of employment and is a crucial instrumental step in policy geared toward ending poverty in India. It falls short of guaranteeing a right to work, but serves a crucial instrumental role in guaranteeing other capability-rights and provides an institutional ground for duties of assistance.

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Preface

Perhaps the best way to introduce this project is by recounting of how it came to be. This seems terribly unphilosophical, but how I came upon my motivations may be the best way to illustrate some of the concerns I hope to address before diving into a lengthy argument.

I spent the spring semester of 2010 studying abroad in India, living in and around Jaipur, Rajasthan. Nothing in particular about India motivated the choice—I don't particularly enjoy Bollywood film, I don't study anthropology, I have little interest in Hinduism or mythology, and I've only started doing yoga very recently. India presented more of a challenge than a semester of fun in London or Australia or Berlin, and I wanted to take the little I had learned of ethical theory into the international, developing context that it best applied in.

After five weeks of classes in the city, each of about twenty American students departed for a five-week field placement with a home-grown development non-governmental organization (NGO) in the desert state of Rajasthan. Options were many—some students had done research on what organization they exactly wanted to work with, some had aspirations to become teachers, some worked on public health initiatives. My roommate conceived a yoga-based conflict resolution model for domestic abuse. I had only a deep-seated sense of injustice at economic inequality and suffering, and a vague conception of human rights that stipulated I ought to do something to change it. My fervor for a human-rights approach precluded specific development initiatives in favor of some pure expression of fighting for rights. I didn't really have a good idea of

what that would look like, and now that idea is only a capstone-worth clearer, but it did lead me on a fairly important adventure.

Rima Hooja, the program director, sensed my indecision. I told her I wanted to go alone to a rural site, having some puritanical conception of authenticity and adventure in mind. She suggested Prayas (meaning endeavor,) a small NGO based in Chittorgarh, and told me of a Khemraj Chatterjee who had ideas about human empowerment and rights as lofty as mine—and had them since the 1970s. He had gained a small amount of local notoriety for his persistent commitment to Marxism even after the wall fell and his stalwart use of the *laal salaam*, or red salute, in his village.

Khemraj lives in a compound that Prayas built on the outskirts of the small town of Bhadesar, in a village called Amarpura. The campus hosts a small school for poor girls, where they live and study in a collective manner in order to avoid the dismal state-run schools in rural Rajasthan. (Or to develop revolutionary tendencies—Khemraj's motivations were unabashedly mixed, and the walls of the schoolhouse were plastered with Bharat Singh, the radical independence freedom fighter, rather than Gandhi.) My time with Khemraj was the most influential of my field placement, although I did travel to several other Prayas projects in Rajasthan. My Hindi skills were dismal, and Khemraj was really the only one around who spoke English at all conversationally. Language barriers prevented me from doing much useful work around the office, so I observed and reflected, as a proper philosopher should.

Khemraj runs a spin-off sister NGO to Prayas so that he can get aid money more amenable to the particularly Marxist methods he favors, as well as leading Prayas' executive board. He named it Pratirodh, which means "resistance." With about nine local development workers, Pratirodh serves as a community resource and catalyst for agitation for social change in the district surrounding Amarpura. Khemraj requires every one of his staff to visit at least two villages daily, one in the morning and one in the evening, and Khemraj does so as well. They organize protests, raise awareness of government services, and act as legal advisors when problems with the government or moneylenders or power brokers come up. This entails a conception of the role of NGOs and rights that is somewhat deviant from the current norm of direct service provision and results-based funding—Pratirodh functions as a collective of community organizers, opting not to provide services directly to people, and instead using a small amount of funding to agitate and develop civil society in order to force the state to realize the rather broad set of entitlements legally guaranteed. Through agitations and legal advice, the NGO is a reactive, people-focused organ for community change.

One of the first excursions Khemraj brought me along for was a visit to what he called a "Nareyga" site. With much confusion, I got Khemraj to admit that Nareyga was actually an acronym—NREGA. He wasn't totally sure what it stood for, so for days I took it to mean National Right to Employment Guarantee Act and marveled at the audacity of such a project and its concurrence with the human rights thinking I had been fixated on for six months. The government of India (GOI) had enacted legislation recognizing a right to employment for all

citizens—I almost immediately saw a capstone project lurking. We drove out to an area of scrub brush and walked quite a way looking for the workers. We eventually found about fifteen women and a few men digging holes in the dry dirt, working in teams with half-sized picks and shovels and bowls on top of their heads to dump it into a long mound. Khemraj explained that they were building a *kaccha* (dirt) road to a hardly-existent temple. We chatted with the workers and their supervisor, and I understood almost nothing; Khemraj was too busy to translate. A woman in a green sari with particularly horrendous teeth started screaming in the middle of the session, partly directed at me, but mostly directed to no one at all. Everyone in the circle fell silent and had a linguistically transcendent look of embarrassment and helplessness until she sputtered out and stomped off to regain her composure. I asked, as carefully as I could, what was going on.

“She lost child very young. She went mad.”

There is a theatre to social interaction in rural India, elevating tragedy to spectacular heights especially when a monolingual foreigner poorly understands it. Walking away from that woman, and looking back on one picture I happened to take of her with a particularly endearing grin, forces a degree of empathy.

I visited another NREGA site with a man who used to work at the school as a cook and hardly spoke any English, so any understanding of what follows has been pieced together later and is largely colored by my perception. The workforce there, Narabdiya, consisted entirely in women. They were digging a reservoir out of the dirt behind their village, similarly using rudimentary tools. Babies crawled

around in the dirt next to a few of the workers, with huge eyes and wispy black hair caked in dust. I carried a few head-loads of dirt for kicks, and they weren't very heavy. But I'm almost six feet tall and weigh 165 pounds—none of the women working could have weighed much more than 100 and none of their foreheads reached my chin. They found me—shoulder-length hair, fully bearded, and grinning under a load—riotously funny.

The evening before visiting the job site, we visited one of the women at her home. Her husband greeted us with an incoherency noticeable even through the language barrier. It wasn't long before he nearly cried and tottered to the corner of their compound, where he began to nurse a small bottle of *desi* (local, off-brand, and particularly abrasive) liquor. This was apparently a routine. The woman explained that she had to take up NREGA work because he was completely incapacitated by alcoholism and persistent unemployment, and she had no skills other than homemaking. Without NREGA, they'd be completely indigent.

I learned later that NREGA actually stands for the National Rural Employment Guarantee Act, but that only temporarily ruined the idea for this project. NREGA is part of a recent smattering of federal laws in India embodying a rights-based framework encouraged by the idea of convergence of human rights and development practice beginning with the UN right to development declaration in 1986 and emphasized in the 2000 Human Development Report. Organizations like Prayas and Pratirodh have embodied this approach since their inception, and play a crucial role in NREGA by agitating local governments to follow through

with implementation and educating people about what legal rights they have. Largely influenced by Prayas' work, Rajasthan has become the paragon of NREGA's implementation in India. I wondered about the rights-basis of these laws—might they intersect with some idea of human rights? Must they exist only in a domestic society? Does human rights even make sense as a lens to view poverty of the sort that happens in India—slow, pervasive, and systemic?

A lot of this thinking was spurred by Khemraj's tendency, along with most other NGO workers I met, to couch their work as encouraging people's human rights. I understood that the term "human rights" is open to much ambiguity and misinterpretation, but the power with which Khemraj used the words struck me—he clearly understood that the turn of phrase would garner foreign donations, but the words also seemed to ground his work in something more agreeable and transcendent than the Marxist/Maoist revolution that never came. (Part of my role there was, implicitly, to campaign for donations at home. I haven't)

The notion of human rights itself tends to depend on an international institutional order, and I thought sympathetically of lofty theoretical explanations of how that order harms the poor long before I visited the village. One day, Khemraj and I rode his electric scooter up a hill (it might have been faster to walk) to visit a small village in the afternoon. An elderly man sat alone on a rope bed beside the main thoroughfare. He coughed impressively, and Khemraj told me that he was dying of asthma and too poor to afford relatively simple treatment for it. The man could hardly speak two sentences without a break for air. The man asked which village I was from, to which I standardly replied "America," and

expected a standard response whereby villagers would usually either shower me with accolades, ask about president Obama with some or another racial epithet, or criticize American foreign policy. Instead, this man only looked bewildered, and after a few proddings, said “I’ve never heard of it.” We asked him to name what foreign countries he knew of, and after Khemraj suggested “Pakistan” he added “Gujarat,” which is actually an Indian state bordering Rajasthan to the southwest.

This story, aside from its enduring place in my memory, illustrates an important point. In the communities that I visited, the global institutional order is so abstract as to practically not exist. The example of this particular man is extreme, but if people don’t even know what a foreign country is, what does an international system mean to them? Approximately nothing. Human rights? This man was worried about dying peacefully, his grandchildren attending school that he never had the chance for, and having water for his son’s crops. Human rights were far from his concern. He may have human rights, but they mean nothing to him, and all of the other humans they intend to help, if they don’t translate to tangible outcomes. A human right to political participation is meaningless when a rights holder has only a vague concept of what politics is; a human right to health rings empty when the rights holder has never seen a hospital. Human rights conceptions may be abstract, but people are not—my project here is to find ways in which human rights can be conceived with that in mind.

Philosophy is concerned with argumentation and abstraction, but I see no reason that tangible experiences can’t inform the process. Martha Nussbaum has even suggested that philosophers concerned with global justice get out of the

library and visit the subjects of their inquiry on occasion, as she did in visits to Ahmedabad's branch of the Self-Employed Women's Association, one of India's most notable NGOs.¹ My experience in India not only motivated the idea for this project generally, but it provided some key ideas which I hope to reconcile to philosophical conceptions about human rights and development.

In what follows, I'll examine Thomas Pogge's project to treat world poverty with strictly libertarian human rights and conclude that a conception of human rights so reliant on theoretical hope and infeasible theoretical conceptions might not mean much for those who need it most—the millions who suffer persistent poverty. His focus on abstractions and the rich makes sense, since the audience for philosophy articles and books on the subject will generally consist in readers at least as educated and affluent as I am. I propose, in the end, that a capabilities-based approach to human rights allows us to conceive human rights in such a way to shift the focus to how they can best help those who need the help, and in so doing blend the theorist's argumentation with a practical sense for tangible outcome. The result will be, as I see it, a human rights that radically empowers humans to demand everything they ought to have secure access to from those who can best provide it—governments, transnational organizations, corporations, and someday a usefully strengthened UN. Until such institutional structures exist, this human rights can provide a justification for laws like NREGA and a forthcoming Right to Food Guarantee and generate responsibilities for international actors to deliver targeted assistance that supports the

¹ Nussbaum is concerned more with feminist theory in this essay than poverty reduction, but the idea remains. Nussbaum, "Public Philosophy and International Feminism" pp. 762-796

implementation of such legal schemes. The international community has such a responsibility and opportunity with NREGA, and I'll suggest some ways in which it can ground the discharge of duties of assistance generated by the capabilities approach.

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Khemraj Chatterjee almost turned me into a Marxist, and was so generous with his papaya garden that I'll never enjoy a sub-par papaya in the States again. Dr. Narendra Gupta was extremely generous with his time in Chittorgarh, and pretty much saved my life by getting me into a hospital—the leading cause of premature death in India is dysentery, he told me. I owe them both the deepest gratitude.

Professor Susan Wadley has been a constant source of encouragement, support, and guidance over the last four years, and I wouldn't be at Syracuse if not for her help.

Bob and Sandy Collison, my parents, deserve perhaps the most gratitude of all—they graciously acquiesced to my time in India, gave constant encouragement when it seemed I had nothing more to say or read, and, of course, brought me into this world.

1. Human Rights: General Introduction

Human rights began after the second world war and have become a contested realm of discourse in political philosophy, international law, and development studies, as well as generating controversy among anthropologists, theologians, and radicals. The proliferation of new human rights and the discourse's expanding role in many different contexts has been such that "human rights" might be an essentially disputed term, much like "terrorism," and thus is at risk of losing any power it might have had.² It seems that this may be the case—human rights have played a serious role in US military action in Iraq and Afghanistan, and as I write Libya has become the next mini-war of human rights-flavored intervention. Military action in all three can be taken as having serious ulterior motives, and the use of human rights as a justificatory ruse. The Human Rights Campaign in the US, with its iconic symbol of a yellow equals sign on a blue field, is actually an organization devoted to the recognition of LGBT rights nationally—while these may be human rights, depending on how we specify the term, the name seems a classic case of appropriating the weight of human rights for at most a subset of the doctrine. Many undergraduates use the term—"I hope to do human rights work"—without a particularly rich understanding of what, exactly, human rights means or how it is grounded. Where human rights gets involved in development studies, it tends to generate significant tension between the legal/philosophical aspect of rights and economic/pragmatic considerations of development discourse. There is philosophical work to be done to find how the

² Griffin, "Discrepancies Between the Best Philosophical Account of Human Rights and the International Law of Human Rights" pp. 1-28

philosophers and world-savers can have common ground, to make human rights justifiably useful for the absurd number of people suffering in poverty. When philosophers set out to solve the nastiest philosophical problems with human rights, they tend to imply abstract actions. When philosophers focus on tangible people, they tend to invite theoretical tangles.

The task of explaining the philosophy behind human rights has been done often in sixty years of human rights discourse, making thoroughgoing review of the philosophical literature difficult and redundant. Rather than rehearse the standard parts of books summing up human rights—a historical take on the development of human rights documents, resolving disputes between social-economic and political-civil rights, fussing over the legitimacy of international legal practice, etc.—this project will assess a selection of accounts on their merits for generating tangible benefits for those who suffer deprivation of them. A working definition of “conception” will be useful, as each philosopher tends to use it with a slightly different tint, and some set out explicit definitions of their own. For now, a conception of human rights will be a theoretical structure including some or all of the following parts: a list of human rights, a normative justification for that list, a position on what role existing human rights activity and documents have to play, what duties are generated by human rights and on whom they fall, and what sort of things the rights on the list are.

To find a conception of human rights most amenable to producing tangible change for rights holders, I’ll examine three directions in forming a human rights conception before suggesting a synthesis, starting with an institutional approach,

moving to a sort of political approach, and ending with a pseudo-naturalistic approach, classifications that will become clearer as the argument progresses. This order is reversed from the standard approach, which tends to begin with the more historical theories that ground human rights in naturalistic theories, and move toward contemporary approaches in response to the difficult problems these raise, most notably the problem of justifying human rights in the face of accusations of parochialism. In ordering things this way—moving from a theory that begins with poverty, through one that tries to answer the problems that generates, to a theory that begins with what humans are able to do and be—I hope to contribute to a shift in focus from international action to the real, tangible people a doctrine of human rights is supposed to protect.

Thomas Pogge explicitly sets out to generate a normative basis for a human rights approach to poverty with his institutional approach. The main upshot is his suggestion that poverty is the fault of an unjust global order that generates a causal link of harm from rich person to poor. There is therefore an obligation to the poor based in purely negative duties not to do wrong. This work started a lively row with Mathias Risse, who argues that the causal chain is at best unclear and, instead constructs human rights as membership rights on the basis of common ownership of the earth. The implications of Risse's account are still institutional, but generate weaker, positive duties of assistance in domestic institution building. I find Risse's account ultimately susceptible to a potential flaw in how he conceives the state system and its implication on the global order, and that in missing the potentially permanent "holey" nature of states he allows

the possibility for his conception of human rights to perpetuate exclusion. To introduce a conception that can include all humans and potentially generate the appropriate tangible outcomes I will sketch a version of Martha Nussbaum's conception based on human capabilities. The problems raised by universality may be ultimately intractable, and the intersection of capabilities with human rights is controversial, but these consequences, if they are indeed of legitimate concern, will have to be reckoned with in any account that takes global poverty seriously.

I hope my approach addresses the following problems that have caused me serious consternation in examining philosophical discourse on human rights: (1) the *global order* that each institutional theory postulates may exist as described, but has little tangible, immediate significance to the humans for whom human rights matters the most, (2) human rights as they are tend to play a reactive rather than proactive role in fighting poverty, and a focus on global institutions perpetuates this bias, and (3) a focus on institutions and what the rich can do obscures the most effective use of human rights—justifying and motivating grassroots agitation by rights holders for positive change, while providing a common ground with and terrain for help from the wealthy.

The most naïve reading of the term “human rights” delivers a simple and crucial condition that each conception ought to preserve: human rights are rights that *every* human has. An undergraduate or Amnesty International advocate might to add another clause to that definition, “in virtue of being human,” but this is the very condition that philosophers have tried to work around in the face of objections from parochialism. Equality, freedom, and dignity are values that tend

to come along with a naïve reading as well. Where naïveté and philosophy intersect most uncontroversially is the first requirement that human rights be *universal*. There is also a sense that any sort of right generates a corollary duty. That duty may be positive, meaning that the duty-bearer must *do* something, or negative, where the duty-bearer must simply refrain from doing something. Onora O'Neill makes the point forcefully that a conception of human rights must have some way to generate and assign duties for it to have any teeth—this is how the philosopher has a role to play along with the farmer and doctor in the fight against poverty.³ This duties-assignment usually forms the pragmatic, prescriptive aspect of human rights that I hope to highlight. Pogge has a similar goal in his account of human rights, and his unconventional approach has generated a great deal of philosophical controversy. Controversy seems a great place to start.

³ O'Neill, "The Dark Side of Human Rights"

2. Pogge's posited libertarianism and global reform—an innovative stretch?

The main thrust of Pogge's conception of human rights is to generate an account that justifies his libertarian development of duties for redistributive justice in *World Poverty and Human Rights*. He's made the account of human rights there clearer and more concise, but his account of the importance of human rights' emergence in the book is valuable on its own. The tools of moralities about how to treat humans have shifted, from natural law, to natural rights, to human rights, and the relevant changes show why human rights is particularly important for modernity. In the natural law idiom, transgressions wrong a supernatural entity, such as God, and the system generated by that supernatural entity is the relevant subject benefited by keeping the law, where the good is something like natural harmony. Natural rights narrow the prospects, by focusing the wronging on the rightsholder—the shift is a secularization in that the moral subject is no longer metaphysical or theological. Human rights goes four steps further: it is a further secularization away from Christian-grounded natural rights tradition, detaches the rights from a metaphysical conception of nature to the metaphysically neutral “human,” restricts the rightsholders to “all and only human beings,” and locates the source of violations especially in positions of authority.⁴ The first three are implicit in the terminology of *human* rights, but the fourth requires some argument that Pogge gives in various forms. If someone is assaulted on the street in a random criminal action, by someone committing the

⁴ Pogge, *World Poverty and Human Rights*, 61-63. This essay first appeared in 1995, and the development of a specific conception of human rights is much clearer in the later essay below. The account of the relevant changes in moralities didn't make the cut, though.

crime for the pure satisfaction of committing the crime, we're loath to call that a human rights violation. However, if a police officer commits the same assault, or a group commits such assaults in a systematic way, we might be more inclined to call this a human rights violation—Pogge counts on this intuition, along with the fact that many human rights in the documents rely on institutional arrangements for their existence, to begin to motivate his grounding of human rights as essentially institutional claims.

Pogge stipulates six conditions for the conceptual aspect of human rights, which should all be uncontroversial. They must be ultimate moral concerns, weighty enough to override legal concerns, apply to all and only humans, do so equally, be unrestricted in time, space, and institutional arrangements, and be broadly sharable across cultures, nations and philosophies.⁵ He considers and rejects three possibilities for whom human rights create demands against: they might be claims by all humans against all human agents (a naturalistic account), they might be restricted claims against national governments (a local-institutional account), or they might be proto-legal demands for all governments to create constitutional or legal rights to them (simply, a proto-legal account).⁶ The first, which pretty much looks like a natural rights account, is unpalatable because of the constraint that human rights are essentially claims against authority, and for two other reasons often leveled against human rights as natural rights. Some of the human rights in practice demand institutional structure, such as the right to a

⁵ Pogge, "Human Rights and Human Responsibilities," 159. I'll follow the development of a human rights conception here, and inline citations refer to this essay.

⁶ Pogge uses U_x designations for conceptions of human rights that I find unduly confusing, although they make for a streamlined way to write the distinctions. I'll stick to the names assigned above.

nationality or representative government. Some necessarily limit the scope of responsibilities to a domestic institutional structure, such as the right to education. (160) The local-institutional account has two unfortunate consequences—it unburdens international actors by overly restricting responsibility to domestic contexts, and unburdens wealthy residents of poor countries from responsibilities to their suffering conationals. If the government is the only one responsible for securing human rights, then individual actors have nothing to do with it. The proto-legal possibility also unburdens foreign agents, and has the potential to demand too much in generating extraneous legal rights when a social good is already enjoyed by other means. A legal right to food might be superfluous in the United States, where other social factors and guarantees such as public assistance ensure access to adequate nutrition for all. It also might be the case that agents, even with a legal right, will have no better access to the good that right exists to ensure. If someone has a right to food but no knowledge of that right, she cannot possibly demand it and thus would still starve, her human right unfulfilled.

Before getting to Pogge's positive suggestion, it's worth gesturing toward some issues with his rejections of these three possibilities. First, the fact that a criminal act isn't a human rights violation could be a problem with our intuitions regarding human rights itself. We might regard a criminal murder in Harlem as a merely criminal act, but this ignores the effects of structural violence on that murder.⁷ We could plausibly construct a causal chain from a socio-economic

⁷ FarmerPaul, *Pathologies of Power*. Farmer is a medical anthropologist, and paints global health inequity as a human rights issue. His concept of structural violence has it that powerful actors can do real violence on the poor: Haitians suffer violence as a result of a history of injustice and power constellations that guarantee their continued suffering.

human rights deficit and official abuses that Pogge would consider human rights violations to the criminal act. Our intuitions about the causes of crime tend to neglect structural factors. There are cases where the structural influence in a crime is negligible, such as clear derangement, but these are clear outliers. There are other arguments about naturalistic conceptions, which will come up below, but the tendency in our intuitions to overlook structural factors in crime is similar to the tendency to overlook global, stable background factors that Pogge notes in his construction of a case for the global order's role in poverty. While playing this point all the way out yields a conception of human rights as requirements for a crime-free utopia, it suggests the importance of the slow-burn approach to human rights I'll explore below.

The above arguments Pogge adduces against the local-institutional thesis are intuitively sound—the negligence of wealthy conationals under a nondemocratic government where they can claim non-involvement is clearly problematic. His arguments against the proto-legal account admit the most obvious objections. It is unclear what the downside of having extraneous legal rights is—if a society guarantees a right to food universally through other mechanisms than a right to it, then what is the cost of having a right to food in legislation? Constitutions might end up being very long, but a set of legal rights corresponding to basic needs doesn't really seem to demand too much on that ground. Legal rights forming guarantees for basic goods could be important if the social arrangements that currently satisfy those needs are contingent. A society

Pogge doesn't mention Farmer's work in his book, but they are both involved in the Incentives for Global Health project to revise intellectual property law for essential medicines.

may have a social structure that ensures adequate access to food, but that access could fail if, for instance, a particularly bad drought hit. There might even be redundant social support structures that don't take the form of legal rights, but these could arguably fail as well. The most secure way to *guarantee* basic goods is to make them legal rights, and hold governments responsible for ensuring access to goods as a last resort when all of the ad hoc social guarantees fail. It's reasonable to think that a government in a well-functioning society would only very rarely step in, or that a government in a particularly broken society wouldn't be able to. In the former case, the rights have no extra cost, and could help clarify governmental action in the event of extraordinary circumstances. In the latter, we have a reason for human rights to be a global concern.

There is no reason that proto-legal human rights, with sufficient linkages between social-economic and civil-political rights, wouldn't assure that agents have legal rights to basic needs such that they had a right to sufficient education in order to demand those rights—in fact, Pogge suggests as much when he explicates his institutional alternative. Below I'll discuss Risse's argument for a conception of human rights whose duties suggest that international actors' chief role is to help build capacity in foreign governments, perhaps through legal aid in juridification (adoption into legislation) of human rights norms. The conception has some features of the proto-legal approach in this regard, and doesn't entirely avoid the accusation that it unduly lets international actors off the hook, but the idea that the best use of international resources is in strengthening capacity for local juridification of human rights is at least worth consideration. There are

certainly other grounds for dispatching a proto-legal account of human rights, but Pogge's arguments here are not entirely decisive.

Pogge's positive proposal for a conception of human rights situates them as claims against the global structures of social organization. He bases this claim on a fresh reading of article 28 of the UDHR: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized." Rather than read this as another right in the Declaration, Pogge takes this article to inform the very nature of the rest of the rights therein—"they are all to be understood as claims on the institutional order of any comprehensive social system." (164) Whatever that international institutional order is, it must be morally evaluated on its amenability to realizing human rights, where realization is the process of providing reasonable security to the good a human right looks to guarantee. The claims of human rights are on the order itself, and against the agents that collaborate or participate in it. (166) The upshot of this conception is that it generates only negative duties not to actively harm others through an institutional order. (169) This gets at one of key motivations of Pogge's project, which is to make human rights agreeable to a libertarian who might suppose that the only duties worth generating are negative ones.

Then we can take Pogge's human rights' prescriptive outcome as reform of any institutional order imposed upon those who claim human rights—all humans, on the relatively uncontroversial requirements above. The phrase "international" in article 28 signals that there is a way to interpret it to apply to a currently existent *global* order, whatever that may be. To make this conception

usefully assign responsibilities for action to individuals in wealthy countries—arguably, anyone who will read philosophical accounts of human rights—Pogge has to succeed in five moves, and these form most of the content of his book. First, there must actually be an institutional order that has global reach in order to make the human rights suitably universal. Second, there must be structural factors in that global order that make it unjust in the sense that it doesn't adequately respect human rights. Third, those in the global order must have some causal connection to it so they can experience the negative duties generated by this human rights conception. Fourth, the unjust global social arrangements must be the *chief* cause of world poverty if this conception of human rights is to have a serious role in reducing it. Fifth, reform of that global order must be plausibly feasible, so that it might actually take place. These considerations get away from strictly normative considerations, but Pogge's global-institutional understanding of human rights, and perhaps any project tying human rights with poverty, demands a blend of descriptive and normative claims about global politics.

The existence of some form of a global institutional order is mostly uncontroversial—it could be argued simply that the existence of human rights treaties implies it. The increasing influence of the WTO in liberalizing global markets since the early 1990's, the widespread acceptance of the UN, and recent successes in establishing a (practically toothless) International Criminal Court confirm the existence of some international political order. This point relies on some deliberate vagueness in the concept of an institutional order—it falls short of a governance regime, and must only consist in some coherence in a set of rules

and agreements that guide conduct among participants in the order.⁸ The notion that there is something unjust about this order is almost dogma among those concerned with human rights, although it is certainly not uncontroversial. Pogge adduces two specific factors, though, on which he bases this injustice. International borrowing and resource privileges, whereby any government that gains control of a country through any means can borrow money from international finance organs on that country's line of credit and can legitimately trade in rights to that country's natural resources, actively encourage instability in countries that have problems with human rights. Whoever can take control of the government through whatever means necessary earns too much legitimacy in the international playing field. Once a despot leaves office or is deposed, his country is still responsible for whatever international debts he has accrued, even if the cash sits in his Swiss bank account, and he likely profited from corrupt allocation of national resources. These inadequacies in the global order are shockingly clear. That we need a philosopher to elucidate them is worrisome.

The first two demands of Pogge's argumentative scheme are easy enough, but the next three are particularly open to debate. To show that individuals are morally related to the institutions they participate in, Pogge shows that representatives who carry out unjust actions do not obscure the chain of moral contact from the affected party to the decision-maker. If someone has a decision to make that could cause harm to someone else as a consequence, they often hire a

⁸ Nickel, "Is today's international human rights system a global governance regime?," gives a set of requirements for what a governance regime would mean, and shows descriptively that the current state of human rights institutions doesn't make the cut. It can still be a global *order*, though.

representative justifiably acting with respect to non-moral ends to undertake the action. The shareholders of a company may benefit materially from that company exploiting labor in a morally deficient, although still legal, way. They may hire a CEO with the explicit motive of maximizing profit for that company. The CEO justifiably, as per his job description, does what is necessary, within legal bounds, to maximize profit. Inserting a supposedly morally inert agent between oneself and those harmed by one's actions, however, doesn't so block one's responsibility.⁹

This situation is analogous to the international system. We live in a country where we participate (ideally) in a democracy, so the moral causal chain at least reaches from the individual citizen to the domestic government. That government sends representatives to international negotiations that set up arrangements including the international borrowing and resource privileges above, because those arrangements benefit our government's bottom line, as it were. Having friendly despots in power can ensure access to natural resources, for example, or provide marginal financial advantages in financing debt to poor countries. The point is that the realist diplomat does not obfuscate the moral relationship between the wealthy citizen and the suffering endured by the people disadvantaged by the social arrangements.¹⁰ There exist, of course, serious objections to this point, but I see no way they can be made in good faith—the chain of moral responsibility from individual to global order to starving person

⁹ Pogge, "Human Rights and Human Responsibilities."

¹⁰ Pogge, *World Poverty and Human Rights*. pp. 77-96. Pogge's example here is of a landlord evicting apartment dwellers, but it seems more complicated than it might need to be, and the harms incurred by being evicted are specific but not necessarily compelling.

abroad in cases such as unfair arrangements or deleterious effects of domestic policy is clearly convoluted, but to deny any connection with the poor abroad rests upon arguments at least as sketchy as Pogge's for it. Without taking up the debate over cosmopolitanism here, I'll assume that Pogge's argument for individuals' moral connection to international institutions is sound enough, since the remaining two claims seem the most problematic.

Pogge points out a dismaying tendency in denying the implication of the international order in extreme poverty that causes 18 million deaths a year. He calls it "explanatory nationalism," a bias that ignores international structural effects such as the privileges above in causal considerations of poverty.¹¹ The explanatory nationalist might claim that local geographical factors such as resource scarcity might be the chief issue—but it's obvious that resource-rich countries tend to suffer the most instability and underfulfillment of human rights, a so-called "resource curse" or "paradox of plenty"¹² Explanatory nationalism could push further from here: inadequate governments mismanage what resources poor countries do have and therefore incur chief responsibility for poverty. But the international institutional structure, with the resource and borrowing privileges, encourages despotic and incompetent governance, so Pogge argues. His conclusion here is that we must consider both national and international factors in poverty, which is fairly obvious once we understand that our intuition tends to ignore structural factors and in light of the two examples of global

¹¹ Ibid., 116-118.

¹² KhanIrene, *The Unheard Truth: Poverty and Human Rights*, 171-199. Khan, current secretary general of Amnesty International, describes this phenomenon in great detail in her chapter "Commodities Boom, Rights Bust." She includes references to the development literature on p. 175

structural violence that he points out. But he argues too much when he states, “features of the global institutional order are the *decisive* variable for the realization of human rights today...” (185, my emphasis) This is a huge claim—rather than simply accept that we must consider both national and global causal factors for the underfulfillment of human rights, Pogge argues, at least in his essay in De Greiff and Cronin’s collection, that the global factors are the *chief* cause. Significant, potentially impossible empirical work would be necessary to really confirm this, and Pogge’s mixed normative-empirical arguments for it aren’t entirely convincing. This step isn’t necessary to produce some negative duties of rectification, even—Pogge just needs to show that the global order has *some* impact on poverty that is weighty enough for a human-rights-flavored negative right, as he arguably has. The relative immediacy of negative duties over potential positive duties should be enough to compensate for the fact that they might not be the weightiest factor in suffering.

Consider a counterargument—in a country that has a relatively sound system of governance, like India, the world’s largest democracy, we could still argue that much of that country’s population suffers extreme deprivation. To say that the international resource and borrowing privileges are chiefly responsible for this seems absurd, since India has never experienced a military coup and, with the exception of Indira Gandhi’s zany imposition of a national emergency rule in the 1970’s, has maintained a relatively vibrant democracy since 1948. There are many reasons that much of India suffers severe poverty, but to pick out colonial history or recently liberalized markets as the main cause is a bygone effort of

dependency theory.¹³ Worse, it can create a dependency attitude and absolve, if not normatively, practically, the role of domestic agents in eradicating poverty—exactly what Pogge wanted to avoid in refuting the local-institutional picture of human rights. The international community shouldn't be let off the hook, but arguing that it is the *chief* cause of poverty is a step too far.

Alan Patten terms the tendency in Pogge's book to assign the main cause of poverty to international factors "explanatory cosmopolitanism." "Explanatory cosmopolitanism is an implausible view because even in a fair international environment there is no guarantee that the policies needed to fight poverty will be introduced domestically... we know from the domestic politics of the developed countries that even fairly democratic countries, operating under an international set of rules that have been shaped for their own advantage, can routinely fail to enact policies designed to help their poorest and most marginalized citizens."¹⁴ Amartya Sen's favorite statistic that African-American males in US urban centers fare worse than sub-Saharan Africans on a number of development indicators is hardly necessary to underscore this fact. Patten is more charitable toward Pogge, though, noting that he elsewhere uses more permissive language in claiming the primacy of the institutional order's fault in global poverty. Patten makes a compelling point—if Pogge avoids explanatory cosmopolitanism, and poverty can still persist even with a reformed global order, then the libertarian outlook on human rights will ensure that poverty remains and people still suffer. Some positive rights will be necessary to finish the project of eliminating poverty, and

¹³ Risse, "How does the global order harm the poor?,". Risse quotes Velasco's denunciation of dependency theory in a footnote.

¹⁴ Patten, "Should we stop thinking about poverty in terms of helping the poor?,".

then it isn't clear that Pogge's project of restricting human rights to negative rights has any upshot at all.

Much of the assignment of duties under a libertarian schema requires a specification of a baseline for harm that most commentators in the *Ethics and International Affairs* symposium on Pogge did not find a compelling argument for in his book. Patten suggests a "substantive baseline" where the global order causes harm as long as no one falls below a standard of subsistence as opposed to the "procedural baseline" where the arrangements are harmful because of the unfairness sketched above. If the substantive baseline is the way around explanatory cosmopolitanism, Pogge's normative reliance on libertarianism is no longer plausible—ensuring a sort of basket of goods or resources is obviously beyond the scope of purely negative duties. Aside from being outside the bounds of the stipulated libertarian framework, such extensive redistributive measures in any global order seem implausible at first glance.

Pogge's last burden that I've adduced is to show that reform is possible. It seems clear that the international borrowing and resource privileges are unnecessary in the international system, and he argues that changing this, among other reforms, is "the preeminent moral task of our time." (179) Pogge may overstate how easy the task of reform will be, but we can easily assent to the idea that it's possible. His suggestions, such as the Tobin tax on currency exchange or a global resource dividend that puts a cut from resource transfer into a global pot for the poor, are compelling—but clearly more aspirational than practical suggestions. US president Barack Obama's 2011 State of the Union address was

entitled “Winning the Future.”¹⁵ I didn’t notice any commentary in media outlets suggesting that “winning” isn’t the point of international relations, or even a cogent idea in a world where the “winners”—namely, us, the rich—stand any chance of becoming “losers.” As long as national discourse blithely accepts and cheers on patriotic conceptions of winning, we can hardly expect the political will for any cosmopolitan proposals intended to let the winners be and help the poor change their standing. Pogge’s suggestions are useful for informing very long-range policy and political philosophy, but their realization is unlikely even in my lifetime, let alone the lifetimes of the people they’re supposed to help. Hopeful and radical propositions for reforming global politics clearly have a place in human rights discourse, but the urgency of poverty that Pogge stresses requires us to emphasize more immediate, practical solutions.

Pogge’s claims that his institutional stance delivers solutions to standard theoretical issues in human rights discourse, and they are worth considering along with the more empirical difficulties I’ve raised so far. Most importantly, Pogge claims that the institutional interpretation resolves the Cold War hangover of separating social and economic rights from social and political rights. Since all human rights only generate negative duties, there isn’t any conflict in kind between the usually positive social and economic rights and usually negative civil and political rights. Pogge also presents an institutional version of “linkage arguments” made by Henry Shue in the 1970s. In bare outline, the argument shows that civil and political rights are useless if someone is so poor or

¹⁵ Transcript available at: <http://www.whitehouse.gov/the-press-office/2011/01/25/remarks-president-state-union-address>

uneducated that they can't exercise political freedoms, and economic and social rights require civil and political freedoms to ensure appropriate actualization in policy. It might be the case that Pogge's institutional emphasis isn't really necessary for this criterion, and it isn't really clear how this part of the argument differs in any significant way from Shue's.¹⁶ Most obviously, Pogge's account makes human rights universal simply by definition—there can only be one global institutional order, and while human rights are a standard for assessing the moral value of that order, they must be unified and universal. The institutional approach doesn't necessarily the most effective theoretical answers to these concerns, but the answers Pogge gives are strong enough. The possibility of *any* best philosophical account—however much Griffin insists that his minimalist approach is the best going—is doubtful, as any reasonable survey of human rights literature yields. As I've suggested above, the path forward lies in focusing on the outcomes of theoretical work, how the theory will generate tangible benefits for the poor.

¹⁶ Mieth, "World poverty as a problem of justice? A critical comparison of three approaches,". Mieth gives an excellent discussion and concludes that positive duties as argued for by Shue do the work Pogge is looking for in a more parsimonious way—as long as positive obligations are agreeable enough.

3. Risse's "institutional thesis" and further concerns

The previous section showed that Pogge must rely on a set of empirical claims for his account of human rights to have an effect on world poverty, the goal suggested by his seminal book's title. The empirical chain from negative rights to moral culpability is clearly the weakest point of the account. Mathias Risse makes powerful arguments in opposition to Pogge's empirical conjectures, and proposes an account of human rights nearly as innovative as Pogge's based on common ownership of the Earth. His response to Pogge is represented by three essays: "Do We Owe the Global Poor Assistance or Rectification?" part of the *Ethics and International Affairs* symposium on Pogge's book, "How Does the Global Order Harm the Poor?," which fills out the argument against Pogge's empirical sketches, and "What We Owe to the Global Poor" which provides a more thorough engagement with both Rawls' conception of institutional change and Pogge's cosmopolitanism. Risse relies on an empirical "institutional thesis" from Dani Rodrik and others' work in development economics to motivate his arguments, and concludes that the global order has done more good than harm in the long run. The only harm for which the global order can be held responsible is fairly weak, consisting in wealthy nations' failure to assist developing nations in institutional capacity building. Given the assumed institutional thesis, such capacity-building assistance is all that will make it into Risse's positive international duties. The institutional thesis is a valuable idea in development economics explanations of growth, but may miss some key features of a human rights approach such as a concern with individuals' exclusion. To solve this, the

already-broad conception of “institution” used may have to be expanded so it ends up looking much like Pogge’s. Risse’s argument against Pogge is forceful enough to conclude that harm and the baselines it requires may not be the best way to think about human rights in the end, since the empirical tangles seem intractable.

Risse’s proposition that the global order has most likely done good all-things-considered reads somewhat like calling the glass a little bit full rather than mostly empty. At first blush, this generates a concern that his argument will engender complacency rather than call attention to the urgency and abhorrence of the problem of poverty. He cites historical growth indicators meant to show that the current state of the world contains less misery than any time in the past and concludes: “Historically *almost everybody* was poor, but that is no longer true.”¹⁷ So far, this project has avoided all such statistics from a deep-rooted suspicion of their reductive and manipulative potential.¹⁸ Each statistic Risse or Pogge uses relies on economist’s notions of poverty, such as the now-infamous \$1 a day poverty line, per capita income, or purchasing power parity. I don’t want to argue that these measures have no place in theory about poverty, but that their place seems significantly less important than either author suggests. In any case, Risse’s reliance on 200-year-old data to reject a historical baseline seems ridiculous simply on concerns about fidelity. Colonial censuses may have claimed to be accurate, but even today getting reliable measures of development indicators in developing countries is extremely challenging, and I don’t see how we should

¹⁷ Risse, “Do we owe the global poor assistance or rectification?” 10.

¹⁸ This claim often signals a simple fear of data, or a common, somewhat bullheaded, rejection of reduction and empiricism in strains of thought considered “subaltern.” Hopefully by recognizing this I avoid the set of critiques I’m tempted to make of such a position.

place any significant weight in these measures. Extrapolations from more recent trends seem equally suspicious.

If we maintain an appropriate open-mindedness about the good life, the following claim is at least plausible: a subsistence farmer who can adequately meet his or her family's needs from work in his or her fields, almost entirely self-contained has a perfectly fine life. Perhaps 200 years ago, almost everybody engaged in this sort of lifestyle and was therefore "poor," but the relatively recent expansion of modern economic systems that threaten such a lifestyle has caused objectionable poverty. I don't intend to argue for the desirability of subsistence farming here, but to show, as Amartya Sen has argued, that purely economic indicators of well being, even when suitably broad, don't form a reliable method for judging what we ought to be really concerned with when assessing poverty from a human rights perspective.¹⁹ To be fair, Risse does cite some more tangible indicators such as life expectancy and infant mortality, but even these seem inappropriately reductive. The disagreement between Risse and Pogge—they use essentially the same numbers and manipulate in opposite directions to support essentially opposed claims about the causation and evaluation of harm. This is not to throw out empirical data entirely, but to suggest that even development economists worry seriously about the usefulness and reliability of such data both in determining causality and positive directions for policy, let alone theory—so many competing factors (including significant allocations of funding) go into the

¹⁹ Sen, *Development as Freedom*, 67-76.

production of the numbers that we must worry in a very serious way about their reliability at all.²⁰

Risse relies on such empirical evidence to motivate his argument against a conception of global harm based on a historical benchmark for harm, where poor countries are worse off than they once were. The bare outline of Risse's claims is almost obvious—of course people are generally wealthier now than they were 200 years ago, and perhaps that wealth is even distributed more evenly. However, this evaluation relies on economical evaluations of well-being, and a human rights outlook should look past the economical man, functioning based on income or GDP or whatever else, and rely on broader metrics of well-being. An argument for such an (admittedly somewhat far-fetched) view would require radical commitments about the good life, such as an agrarian form of naturalism or a Marxist conception of labor, that I'm not at all prepared to make here—but they shouldn't be thrown out as completely implausible in a broad view of human rights.

Aside from dismissing the historical benchmark, Risse considers two other benchmarks for harm that Pogge might adopt, counterfactual harm and distributive fairness. In the former, we imagine an alternate society where the Rich had never impacted the Poor. Risse points out not only that it is difficult to know about such a situation, but also impossible—when we analyze a global system, as we must to evaluate the alternative arrangements required by Pogge's

²⁰ Deaton, "Price Indexes, inequality, and the measurement of world poverty." Deaton points out a seriously troubling complexity in the PPP index. William Easterly is extremely critical of poverty statistics and their manipulation by aid organizations who get funding based on them at his blog, [www.aidwatchers.com](http://aidwatchers.com), particularly the recent post: <http://aidwatchers.com/2011/04/inception-statistics/>

model, there exist no systems similar to any counterfactual with which to compare them. There's only one globe, and we're stuck inside it; methods of comparative analysis don't work without other systems to compare against. Any substantive conclusions based upon counterfactual investigations of the sort employed by comparative analysis will be impossible to generate for the whole globe.

Explanations of harm such as dependency theory, abandoned above, or that past colonialism generated persistent harm, are then highly suspicious insofar as they rely on counterfactual considerations of how things would have turned out differently. But then Risse seems to overstep in making a similar assertion about the cause for developed nations' development: "The exploitation, theft and murder they brought upon the world notwithstanding, developed countries became rich because they industrialized, thereby benefiting from an ever more refined division of labor."²¹ This seems inconsistent at best—disagreement and epistemic limitations make it practically impossible to settle why developing countries are poor, but it's clear that industrialization and specialization made rich societies rich? As above, a human rights perspective precludes these economic presuppositions. If we can't reasonably know why developing countries are poor, we also can't know definitively why developed countries became rich. To speculate wildly: what if the invasion of a practically pristine continent and the subsequent genocide of millions of people allowed America to become as rich as it is today, and the tendency of Western European societies to collapse and rebuild in early history made that region rich, and the existence of relatively continuous societies in South Asia and Africa causes poverty there, with ever-increasing

²¹ Risse, "Do we owe the global poor assistance or rectification?," 14.

population crowding and resource abuse? Why not, if there aren't any good ways to verify such claims or any others with counterfactuals or reliable and useful empirical data? Risse shows that social scientists are deeply divided about what causes prosperity and poverty. Where there might be agreement, it rests on the presuppositions that human rights exists to cast out. These considerations incline me to give up on the search for a baseline for harm, and search, as Risse does, for a basis for human rights that generates duties independent of contentious empirical study.

Before examining Risse's grounding for human rights, it's worth looking at the suggestions he makes for duties of assistance instead of Pogge's duties of rectification, and what concerns the assumptions there raise. The 'institutional thesis' is key and holds that the main cause for countries' economic prosperity is institutional quality, where institutions are the rules that define how a society functions, "such as stable property rights, rule of law, bureaucratic capacity, appropriate regulatory structures to curtail at least the worst forms of fraud, anti-competitive behavior, and graft, quality and independence of courts, but also cohesiveness of society, existence of trust and social cooperation, and thus overall quality of civil society."²² Two competing economical theses provide the counterarguments Risse combats: the 'geography thesis' holds that a broadly construed notion of resource endowment accounts for the wealth of a nation, while the 'integration thesis' has it that integration in world markets through trade liberalization and the like determines economic well being.

²² Risse, "How does the global order harm the poor?," 355.

The clearest and most important empirical claim that Risse adduces against (a caricature of) Pogge is that simple resource distribution—compensation for an unjust order in the form of official development assistance, resource dividend, or whatever else—can hardly reduce poverty effectively. In order for resources to make it into the hands of the poor, institutional complements such as banks must exist; development projects need local institutional support to have effect that endures past the fickle flow of international aid funding. Risse references the amount of disagreement in development economics in this line of argument also, relying on former World Bank economist William Easterly's skepticism about cure-alls for growth. Easterly concludes that a full basket of complementary development measures are required to ensure lasting growth and that such a nuanced project is much more difficult than economists thought in the latter half of the twentieth century. Even that conclusion relies on the foundation that economic growth leads to positive outcomes for the poor, which is in itself controversial—we ought to note that despite the spectacular growth rates in South Asia over the last two decades, an equally spectacular amount of poverty persists.²³ It should be obvious, as I have argued so far, that the empirical issues here are wildly complex, but Risse presents the institutional thesis as the best theory going and accepts it as such—if it were to be disproved, his entire argument would collapse. It is broad enough to avoid the charge of being a panacea in the vein that Easterly demolishes—institutions, so understood, require broad reform that outside actors have limited agency to enact. The limits Risse

²³ Easterly, *The Elusive Quest for Growth: Economists' Adventures and Misadventures in the Tropics*.

places on outside involvement, and thusly the possibilities for positive duties generated by human rights (even though human rights haven't come into the argument yet) depend on further assumptions about institutional change that may need to be reconsidered.

The idea that institutional development is necessarily indigenous is crucial to Risse's argument, forming an additional "authenticity thesis," nearly mentioned above—the institutions that Risse is concerned with are of the sort that depend crucially on domestic support. The rules of the social game don't count for much if no one wants to follow them. Risse grants that institutions' emergence can be influenced by outside agents, but their persistence requires domestic support. This generates four constraints on institutional assistance that Risse presents: first, that outside agents cannot be effective at nation-building; second, that any such effort will be inherently paternalistic; third, no moral duty can exist to do something that, according to the first, agents cannot execute well; fourth, that outside help in institution building undermines the stability of those institutions.²⁴ Risse may be correct that assistance is better than rectification, along with many of Pogge's critics, but if his constraints on aid were suitably weakened, Pogge's rectifying measures might be able to conform to Risse's system. First, it isn't so clear that outside actors will be totally ineffective in domestic institution-building, even though this might be very difficult. Consider the success of externally stimulated but locally-managed microfinance institutions in the developing world recently, or models of women's self-help groups that have proven quite effective in parts of

²⁴ Risse, "What we owe to the global poor," 91.

northern India.²⁵ These ideas were at once external and indigenous, suggesting that the line required for the authenticity thesis isn't so sharp as Risse suggests. Outsider money might provide salaries for indigenous, local organizers who help educate and advise the indigenous poor to agitate for beneficial institutions and organize against the existent unjust local institutions. There seem to be ways to channel such resources that aren't so paternalistic as to be objectionable. This funding is inherently unstable, but the point is for the development workers to work themselves out of a job, building self-sustaining institutional frameworks that eventually won't require outside funding. This sketch of a rights-based development model is new and relatively untested itself, but it should show that the constraints aren't necessarily so strict as Risse makes them out to be. Aside from the potential implausibility of Risse's strict constraints on institutional change, a further and related concern is that Risse's focus on long-term solutions misses the urgency of poverty that Pogge emphasizes.

Rory Finnin argues that Risse's approach disguises a potential for disaster. He construes Pogge's dismaying picture of severe poverty as analogous to a fire raging in a building with victims trapped inside. Resources are available to put the fire out, but standers-by do not know what caused the fire and accordingly what measures would best put it out. As a result, the standers-by decide to build institutional capacity for the putting out of fires, and the victims burn to death

²⁵ Even more recently it has been suggested in development circles that these measures are in fact ineffective, or prone to corruption, or worse—Mohammad Yunus is being prosecuted by the Bangladesh central government currently for alleged improprieties in the handling of the Grameen Bank. Fervent supporters of micro-finance are still out there, though, and it is good enough for the current argument that their support isn't completely implausible.

while they deliberate. This paints a dilemma: if the institutional thesis is right, institutional capacity building as a prescription offers the most value in development aid, while stop-gap resource transfers won't do much, although they will have some effect. If it's wrong, though, institutional capacity building will allow poverty to persist while the international community deliberates on how institutions ought to look, and short-term resource transfer and other less-sustainable measures will be more successful than was thought.²⁶

Finnin suggests a matrix thesis accounting for a wide diversity of factors in the cause of poverty, any of which may present itself more strongly in one society or another depending on local expressions of those factors. This is analogous to my suggestion that we interpret the institutional thesis broadly—"matrix thesis" might then be a more appropriate term. What is important, though, is that some help needs to be done even though the best help isn't entirely clear. Finnin suggests that Pogge's approach, focusing on the immediacy of poverty deaths, suggests a proper course of action in providing for immediate rectification (which ends up looking very much like normal positive duties of assistance) coupled with long-term global institutional changes that will make the international system more amenable to strong local institutions. The institutional thesis is no more determinate than any other empiric "explanation" for poverty, and its adoption can lead to morally distasteful lacunas in prescriptions for action. Finnin captures the urgency of poverty and, if his paper wasn't constrained to the Risse-Pogge debate, his line of argument ought to simply yield positive duties of assistance based on the considerations of urgency and moral hazard he draws.

²⁶ Finnin, "Dilemmas of the Institutional Thesis: Pogge vs. Risse on Global Poverty," 48.

Pogge explicitly sets out to get around such standard arguments for positive duties of assistance, but the urgency of poverty is a strong motivation to reconsider a slow-burn approach to alleviating it.

Two conclusions suggest themselves so far—Pogge hasn't really given strong enough empirical arguments for a baseline of harm that can justify tangible results from his libertarian approach to human rights, and Risse has shown that this empirical work might be impossible. Risse hasn't really given an argument that excludes Pogge's, though, if we take the institutional thesis to be sufficiently broad and recognize that Pogge's rectifying prescriptions can include both stopgap lifesaving measures and long-term sustainable institutional capacity building. While I find Pogge's redistributive measures unsatisfying in their implausibility, it is conceivable that the funds from a resource dividend would be directed toward the sort of institutional support—training teachers, funding community activists, etc.—that Risse seems to suggest.

4. Common ownership and associative human rights

Development economics and the empirical concerns with their intersection with human rights as considered above yield a great temptation for cynicism about the whole project, but there may still be ways to ground a human rights theory that yield results for the poor. What does a theory of human rights needs to look like in order to truly serve as the 21st century “language of emancipation,” as Risse puts it? How may human rights replace now-defunct idioms of Marxism, dependency theory, and theological systems as a language to empower the poor?²⁷ Risse proposes a schema for human rights conceptions, concludes that a philosophically best account of human rights probably doesn’t exist, and grounds his conception in common ownership of the Earth to yield an assignment of positive duties based on associative rights shared by all common owners. He stretches his conception slightly to include the right to work as a human right, which provided an opportunity for Pogge to lambaste the idea that human rights can be properly construed as membership rights at all. Risse’s evaluative system for human rights is useful as an analytic tool, and provides motivation for an argument that membership might be misleading in light of potentially enduring concerns about the nature of the global association in which membership is meaningful.

²⁷ Risse, “A Right to Work? A Right to Leisure? Labor Rights as Human Rights,” 14. I mention theology in reference to the concept of liberation theology that informs much of this sort of work in South America. See Engler, “Toward the “Rights of the Poor”: Human Rights in Liberation Theology” for a fascinating discussion of the acceptance of human rights by the liberation theology discourse. I find this movement compelling, and occasionally lament my protestant roots as a result.

For Risse, a conception of human rights has four components: a list of rights, a basis for why people have the rights on that list, a principle that generates the list, and an assignment of duties to fulfill the list of rights.²⁸ He never gives an explicit argument for this schema. However, it provides a useful instrument to get the array of human rights conceptions on the table straight, and allows Risse to conclude that the theoretical options will probably not yield a singular best account. Human rights conceptions break up into basis-driven, principle-driven, list-driven, or (perhaps) responsibility-driven depending on which part of the schema they take as a starting point. Risse runs through a number of conceptions with this in mind—Beitz’s practical conception is list-driven because it takes human rights practice as prime and goes from there, Cohen’s is basis-driven since it begins with membership in an acceptable domestic political society, and Risse’s is basis-driven resting on common-owner membership.²⁹ Under this schema, it seems that Nussbaum’s capabilities approach would be principle-driven in that it takes the principle of human capability as prime.³⁰ Sen’s construal of human rights as elements of global public reason would also be principle-driven because, if nothing else, he explicitly refuses to formulate a list or endorse a basis.³¹ Pogge’s conception seems to be principle-driven, if we think of his reading of article 28 as a principle determining how the list functions. Risse concludes from his classification and the clear differences between different types of conceptions that no singular conception will be able to answer all of the relevant philosophical

²⁸ Ibid., 16.

²⁹ Beitz’s case shows some slippage in the schema, since it might also be construed as principle-driven, beginning with the function of human rights discourse instead of the list.

³⁰ Nussbaum, “Capabilities and Human Rights.”

³¹ Sen, “Elements of a Theory of Human Rights.”

questions about human rights in a satisfactory way—we cannot hope for a best philosophical account. Basis-driven conceptions resting on human agency will usually deliver a revisionist list, like Griffin's, and then impose rather strong responsibilities correlating to the relatively strong and short list. List-driven conceptions will tend to have longer lists and weaker responsibilities, and succumb to objections in the vein of O'Neill's work mentioned above.

Pogge objects in his comment that an application of Rawlsian deliberative equilibrium to this dialectical situation could allow us to come up with the strongest points of each conception to synthesize a best answer to each question demanded of human rights. It seems to me that Risse has drawn distinctions between the conceptions he sketches that will force them to be in some way mutually exclusive—for example, a substantive minimalist viewpoint about the content of human rights cannot possibly countenance the expansive viewpoint of a practical conception since the very point of minimalist approaches such as Griffin's seems to be revision of the practice. A justificatory minimalist, such as Cohen, will be forced to reject the positive duties generated by the heavyweight basis employed by substantive minimalists—it may be impossible to resolve these conflicts in the end. That said, there is some room for selective synthesis of human rights conceptions, as I will propose below, and the insight that different conceptual approaches serve different ends is a valuable one. Risse's stipulated end is to deliver an explicitly non-parochial conception of human rights that may deliver positive duties of assistance that are very limited as per his commitment to the institutional thesis. I find these restrictions informative, and yet somewhat too

strict, and the contingent, non-parochial basis Risse offers is unlikely to meet the requirement that human rights radically end the exclusion of the poor from the institutions that Risse argues are necessary to support the fulfillment of human rights.

In developing his conception, Risse makes three main moves. First, he resuscitates a 17th-century idea popularized by Grotius in “On the Law of War and Peace” that political community should be founded on the basis of common ownership of the Earth. Then he counts on a view of the global order, defined by the system of states that now govern all of the relevant parts of Earth’s territory and the international institutions that regulate the interactions of those states. In virtue of living on the Earth that Risse posits is completely ruled by this global order combining states with international rules of the game, each person who owns the Earth in common is a member in this order. Then he conceives of human rights, including the standard requirements of universality, urgency, and a political nature, as essentially associative membership rights in that global order. The obligations generated by these human rights depend on that membership, as obligations of assistance might hold in any political association.

Resurrecting the idea of common ownership has a fairly disagreeable and radical connotation since it has been left mostly alone for about 300 years. An obvious, somewhat superficial objection here is that common ownership itself is just too weird to ground human rights, and I’ll reserve judgment on those grounds until Risse publishes his book on the topic. Risse meets skepticism about the weirdness of his basis by asserting that the ownership in question is directly

related to the basic resource-goods that make human life possible, and this makes it amenable on its face to human rights perspectives.³² In very rough outline, common ownership gets off the ground on the intuitive ideas that basic resources are necessary to human life and aren't earned by anyone, so everyone has some claim their ownership in a pre-institutional state of nature. This evenly distributed claim generates natural rights including basic liberty rights and a "protective perimeter" of subsistence rights, only guaranteeing those goods that can be afforded by the commonly owned original resources.³³ The modern state of affairs is obviously not a state of nature though; specifically, the imposition of a state-based system causes both conventions that restrict individual natural claims to resources through restriction of movement and property conventions and generate group (i.e. national or perhaps corporate) entitlements to the exclusive use of resources. This has the effect of subjecting people to the "ex ante risks and ex post reality of finding themselves in conditions where their moral status as co-owners can be exercised at most in rudimentary ways if at all; and it allows them only limited exit options (if any) if they find themselves with an abusive government."³⁴ This imposition generates human rights as claims against the global institutional order that are inherently associational and partially derive from Grotean natural rights to common ownership.

Risse's conception of membership here is thinner than that generally used when considering membership in a club or domestic society:

³² Risse, "Common ownership of the earth as a non-parochial standpoint: A contingent derivation of human rights," 278.

³³ Ibid., 288.

³⁴ Ibid., 290.

“Being a member of that order means to live on the territory covered by it and to be subject to those bits of this interlocking system of jurisdictions that apply to one’s own situation. By now all human beings are members in this sense because they all live on the territory of some state.”³⁵

This fact is contingent, but since the state order is “relatively abiding,” Risse claims that human rights as associational rights will be sufficient to guarantee basic access to subsistence. The rights Risse can deliver with this requirement seem at first to be very minimalist, by reading the requirements on states “robustly” he can generate a broader set of human rights that limit state power against individuals. This part of the argument is rather unclear, but it seems that he means that the lopsided amount of power states hold against individuals needs to be checked with a broad set of rights to fully guarantee subsistence. Then Risse can get civil and political rights, as instrumental to guaranteeing basic access to goods and determining which states get to restrict access to their group claims on resources with closed borders. Importantly, even this robust reading doesn’t deliver some of the more expansive rights on the UDHR, such as leisure or guaranteed work, since these cannot be viewed properly as checks on state power. Risse doesn’t present his derivation of human rights as exclusive, however, allowing that some other grounds may be acceptable as well to generating broader human rights than what his basis generates. It isn’t stated particularly clearly, but the responsibilities in this conception fall primarily on states to guarantee basic access to subsistence, and derivatively on the international order to help when states cannot do so (presumably, in light of the institutional thesis above, restricted to institutional capacity-building.)

³⁵ Ibid.

I don't wish to enter a debate on the acceptability of common ownership as a basis for human rights, but there are a few clear fault lines in Risse's derivation that are worth mentioning. Firstly, and of only superficial importance, there is an intuitive contradiction in claiming that a human rights conception based on common ownership of the Earth will be essentially non-parochial: common ownership of the Earth in itself is a potentially parochial position, aside from being an relatively heavyweight commitment to natural rights, however compelling Risse's arguments to the contrary are. Risse makes the rather confusing claim that thinking of human rights "in virtue of being grounded on features of an *empirically contingent* but *relatively abiding* world order, differ from pre-institutional moral rights and from rights that hold only within that association with which we are most familiar, the state," solves the problem of parochialism, but this isn't even really clear.³⁶ The problem is that the rights crucially rely on the idea of common ownership, even given the supposed attractiveness of their reliance on a contingent global order.

The second concern is Risse's characterization of human rights as membership rights, and this seems to be the step in his movement from natural rights (if we can accept Grotean natural rights) to human rights. Pogge raises the point in his comment on Risse's essay on labor rights that he sees no good reason for Risse to abandon the standard interpretation of human rights as non-contingent and universal in favor of human rights as associative rights. He also worries that Risse's conception allows certain rights unrelated to basic needs to be left out as

³⁶ Ibid., 292.

not urgent enough global concerns, torture being the prime example.³⁷ The first of Pogge's objections is unfair—Risse explicitly allows that other conceptions can fill in rights not captured by his system of derivation. The “robust” reading of his requirements above may deliver rights such as freedom from torture as global concerns based on enlightened self-interest, perhaps, but Risse isn't completely clear about this and I share Pogge's skepticism that such requirements will be sufficient to generate the required set of human rights. Similar empirical arguments to those required for Pogge's conception to deliver would be required for such a move, and Risse himself showed that those will be very tough to come by.

Pogge worries very much in his response that Risse's conception of human rights as membership is needlessly a reactionary move against 60 years of human rights discourse that hold that human rights are essentially held by every human. The reactionary nature of the account doesn't worry me much, and on my reading Pogge's account is somewhat reactionary as well—but there is a very serious concern about Risse's characterization of human rights as membership rights. Risse uses the empirical contingency that all individuals live on territory controlled by states as a crucial bridge from natural rights held by all humans in virtue of living on the Earth to arrive at associative human rights held against the global order. There are two problems here: first, even if individuals are members in the thin sense of membership, the practice of the global order as we see it—and can expect to see it for the foreseeable future—fails to accord any substantive

³⁷ Pogge, “Comment on Mathias Risse: ‘A Right to Work? A Right to Leisure? Labor Rights as Human Rights’.”

benefits on the grounds of thin membership. Secondly, the territorial coverage of the state system that Risse takes for granted may in fact be less homogenous than maps indicate, and the holes inherent in this coverage will exclude many of the people who need the security his conception of human rights delivers. I've hinted earlier that the global order isn't as relevant to those concerned with human rights as it is to philosophers theorizing about them—although I don't have a field study to properly back this up. If this is the case, Risse can still succeed if humans are members of states constitutive of the global order in the sense that Risse relies on, but states routinely ignore this membership with impunity. For that matter, the international community does the same—interests far divorced from human rights, such as economic and strategic interests that India and China have in Burma, effectively stymie intervention in that grossly human rights violating state. This exclusion can happen in two ways in the domestic case. First, an obviously deviant state could exclude a large portion of its population from the benefits of statehood—these people may be members of the state in virtue of living on its territory, but they are essentially excluded in the state system. Risse might point out that these excluded groups are still members of the global order and that international intervention on their behalf is justified because the state is not meeting its human rights obligations. However, geopolitical considerations like those just mentioned will preclude intervention on their behalf, contingently and abidingly. Their membership in the global order means very little in practical terms.

My argument for the second sense of exclusion based the heterogeneity of the supposedly continuous state system provides the basis for my concern here, but I cannot provide more than a conceptual account of a rather empirical insight. Hopefully a hand-waving example will suffice to show that the objection is a plausible description of how the state order differs from Risse's idealized conception.

Even in well-ordered states, many members may of practical necessity lack access to that state. A layman's understanding of the current state of affairs in India provides an excellent example of this phenomenon, although it can be extended to remote parts of most states. Just short of a civil war is raging in the largest democracy on Earth, and a ludicrous amount of that country is almost completely out of government control. "The Red Corridor," as it's called, covers almost a third of the eastern part of the country, and is at least heavily influenced, if not completely under the control of, "Naxalite" rebels.³⁸ We almost never hear about this quiet disaster in the West, and to discuss this situation in more than bare outline is another project entirely. According to one line of explanation among many, the Naxalite-controlled areas were never really under any influence by the Indian government. These parts of the country are both very remote and traditionally excluded based on social grounds—tribal people lie outside the caste system entirely. The people in these jungles have traditionally been extremely

³⁸ The term "Naxalite" describes any of a number of mostly Maoist violent revolutionary groups. It was coined in reference to the village Naxalbari in the state of West Bengal, where the violent movement began in 1967. The nature and cause of the movement is hugely contentious, and I cannot hope to enter that debate here. Arundhati Roy published a fascinating account in *Outlook Magazine*, "Walking with the Comrades" on March 29, 2010, available at: <http://www.outlookindia.com/article.aspx?264738>

poor on any thoughtful definition, and in most cases still are—if the state has never made any real effort to include them as members, and armed revolution has ensued as a result, what have membership-based human rights done for them? Risse argues that tribal people may still have his version of human rights, but that “in the case of such tribes there presumably are unusually strong reasons to set aside enforcement of human rights.”³⁹ This very strong reason not to intervene seems completely counterintuitive—in many cases, those in question are precisely the ones in need of the sorts of protections that Risse prescribes. For instance, people in such a hole of state control might find themselves threatened when mineral reserves are discovered on their land, and require some protection of basic needs as their previously almost natural existence is impinged upon. It is conceivable that the case is similar for many other rural peoples the world over, and that membership-based human rights will essentially exclude them as a byproduct of the reliance on state control as a bridge from natural rights to human rights. This result is clearly unacceptable, and gives a strong reason to be skeptical of the efficacy of Risse’s approach.

Another example might help illuminate the point. To stretch an analogy used in completely different contexts, the modern state system may look like American cheese on the surface, but actually admits areas where the coverage of state control looks more like Swiss cheese.⁴⁰ In the holes, state power hardly

³⁹ Risse, “What are Human Rights? Human Rights as Membership Rights in the Global Order,” 25.

⁴⁰ Barfield, *Afghanistan: A Cultural and Political History*, 67-71. Barfield introduces the “Swiss cheese” model to describe how historically difficult Afghanistan has been to control. Some conquerors realized that Afghanistan’s territory looks almost completely empty when considering which regions may actually be possible to control. As a result,

reaches at all, either due to territorial difficulties States have serious territorial holes, even though they may not show up on the map. These are shrinking with technological advances, but it's possible to think that even states that nominally respect human rights will continue to be holey for the predictable future. Some of the peoples who live in the holes will have no interest in human rights and be living a perfectly decent life, but some of them will necessarily suffer deprivations and dangers from the pressures of modern economic life without having reliable access to any of the guarantees that a state-membership based human rights offers them.

Jon Mandle offers another crucial situation that may repudiate Risse's version of human rights as membership rights:

A particular region in this society is populated by an ethnic minority, and in that territory private death squads target the minority and operate with impunity. The government could take action to crack down on the terror squads, but the majority believes that since they are largely confined to a particular region, doing so is not a priority. It is not that the majority actively supports the death squads. The latter simply do not register as a major concern for most people, and the government reflects this indifference.⁴¹

In this case, the territory isn't necessarily out of government control—it is simply out of government concern. Even if the poor are nominally included in the association, the powerful members of the association are in no way barred from disregarding them; thin membership doesn't necessarily count for much. This is obviously morally wrong, but and a situation human rights ought to work to

many rulers of that country have left the difficult regions mostly alone, with only passing and peripheral assertions of state power. Is this how we want a human rights regime to look, though, allowing the often-remote and difficult to “control” poor to their own devices? It seems contradictory to the very idea of universal human rights.

⁴¹ Mandle, *Global Justice*, 49.

counteract—but if membership provides the basis for human rights, there is an intuitive limit on the human rights of those who don't have membership. The international system is just as guilty as domestic societies in ignoring some members—the only groups that get the protections that they require are those who understand how to work media and, in many ways, get lucky. To make membership-grounded human rights amenable to human rights' function in ending exclusion requires a fairly revisionist understanding of the idea of membership, which Risse understandably offers. It may be more sensible and theoretically intuitive to avoid invoking convoluted and thin ideas of membership so that we don't miss the importance of ending exclusion with a practice of human rights.⁴²

I find this concern disastrous to Risse's painting of human rights as essentially associative, even if his account of natural rights is compelling. While acknowledging that the middle move in his derivation probably won't work, there are some valuable insights that we ought to hang on to moving forward. First, Risse's assignment of duties properly locates states as the primary morally responsible agents in guaranteeing access to subsistence. That states must compensate for the effects of their imposition on common-owners access to basic resources drifts closer to Pogge's conception than is completely obvious in that it looks suspiciously like a duty of rectification for the imposition of unjust institutions. Risse doesn't take the restrictions imposed by states as unjust, however, so the obligations necessarily won't be termed as rectification for harm.

⁴² KhanIrene, *The Unheard Truth: Poverty and Human Rights*, 47. Khan devotes a whole chapter to the idea of exclusion and how human rights serves to combat the holes in political community that the poor suffer.

Risse generates the sort of positive duties I want to end up with—on the international community to assist local institutional capacity building and on states to ensure guarantees to the needs stipulated by human rights. He does this on a potentially objectionable conception of membership, however, and this intermediary step in his argument runs the risk of perpetuating exclusion and therefore missing a key strength and focus of human rights discourse. He also falls short of giving an argument for duties to ensure a few things we want to preserve as human rights, such as a right to be free from torture and seems to preclude the sort of stop-gap short term duties of assistance that may be necessary in urgent situations of extreme poverty. I will close the theoretical discussion of human rights with a sketch of how a capabilities approach in the vein of Nussbaum's Aristotlean approach to distributive justice may allow a less problematic intermediate step from naturalistic entitlements to human rights. The line of argument looks very similar to Risse's and delivers very similar results, but engenders its own set of objections, mostly focusing on standard worries about parochialism that we may simply have to swallow in order to deliver the positive upshot of a human rights that can reliably concern itself with combating poverty.

5. Capabilities as a principle and end: a return to orthodoxy

The idea of capabilities is not at all new, and sadly isn't uncontroversial as it seems, although it has become common currency in development discourse largely due to the work of Amartya Sen and Martha Nussbaum in the 1980's and early 1990's. Capabilities shift a focus on resources in the Rawlsian, or Poggean, or Rissean, systems of global justice that ask essentially, "what does a person have to to the question, "what is [a person] actually able to do and be?"⁴³ A narrow focus on resources, Sen and Nussbaum argue, misses the fact that some persons, due to structural (which are going to be primary human rights concerns) or personal (still important, but more contentious to deal with using human rights) factors, won't be able to make equal use of an equal resource basket. The centrality of capabilities to proper development indicators turns on their ability to evaluate well-being in this sense, as I hinted at above in the discussion of the empirical issues between Pogge and Risse and how they both rely on potentially contestable development and poverty indicators such as income or per capita GDP or even Purchasing Power Parity. Actually defining ways to measure capabilities understood gets tricky, but Sen and other economists at the UN have developed indices that combine a variety of data to assess well-being as such.⁴⁴ As an objective measure that focuses on people instead of potentially homogenizing and malleable numbers, the capability approach has proven to be extremely useful in the identification of human development issues and the design and evaluation of aid projects. Instead of focusing on human functionings—what people actually do

⁴³ Nussbaum, "Capabilities and Human Rights," 127.

⁴⁴ The economical analysis here is not only beyond my depth but lies outside of the normative focus of this project.

and are—the capabilities focus on the possibility of having those functionings given social context, personal potential, and access to resources. Even if someone has a right to food, they can choose to forgo it for a fast; a right to play may be forfeited to pursue a life or arduous study (or writing a capstone!) Sen makes this clearer with his distinction between opportunity and process aspects of freedom—capabilities address opportunity, but not process, where process is understood as the substantive realization of some freedom.⁴⁵

Nussbaum, when considering the intersection of capabilities and human rights, splits up capabilities into three types: basic, understood as a simple potentiality to exercise some action; internal, understood as a personal state that includes sufficient conditions to exercise a function; and combined, where the internal capability meets with external conditions that allow the exercise of some function. “The aim of public policy is the production of *combined capabilities*.”⁴⁶ Under the perspective I’m advocating that human rights should focus on tangible outcomes, we can add that combined capabilities are also the aim of human rights. She goes on to sketch out a list of ten capabilities that she takes as both valuable in themselves and instrumental to making a life fully human: life, bodily health, bodily integrity, the ability to engage sense, imagination, and thought, the ability to exercise emotions, practical reason, affiliations, living with other species, play, and control over one’s environment. These constitute the basic combined capabilities that will be candidates for human rights. Nussbaum then describes how human rights intersect with capabilities, in that the securement of a human

⁴⁵ Sen, “Human Rights and Capabilities,” 153. The process/opportunity distinction is one of Sen’s key contributions in *Development as Freedom*, introduced at p. 17

⁴⁶ Nussbaum, “Capabilities and Human Rights,” 132.

right should guarantee the capability, broadly construed, to enjoy the good of the human right. One of the most simple upshots of this is an intuitive unification of civil-political rights and socio-economic rights: "all capabilities have an economic aspect: even the freedom of speech requires education, adequate nutrition, etc."⁴⁷ Capabilities, moreover, allow a basis for the important aspect of human rights that preferentially distributes attention to the excluded and marginalized. Similar to Risse's entitlements to originally owned goods, capabilities also place social and economic rights at a preferred position—the capability to have adequate subsistence seems prior to all the other capabilities on the list. In gesturing at why capabilities don't completely make rights obsolete, Nussbaum gives four reasons why rights are still important even with capabilities: they emphasize justified and urgent claims to some basic capability, add urgency and linguistic weight to whatever capability list is accepted, lend a connotation of choice and autonomy, and, most importantly, provide a terrain of agreement for a capability list.

Sen differs from Nussbaum in his argument for the intersection of capabilities and human rights mainly in his refusal to specify a capability list, accompanied by somewhat vague assertions about what a list of human rights might look like. He gives two main reasons for this, both of which I find unsatisfactory: he doesn't see how an overarching list of capabilities can be sensitive to local contexts, and doesn't want to short-circuit public reason by asserting a theoretical list. "The problem is not with listing important capabilities, but with insisting on one pre-determined canonical list of capabilities, chosen by theorists without any general social discussion or public reasoning. To have such

⁴⁷ Nussbaum, "Beyond the Social Contract: Capabilities and Global Justice," 13.

a fixed list, emanating entirely from pure theory, is to deny the possibility of fruitful public participation on what should be included and why.”⁴⁸ Nussbaum doesn’t seem to take her list as so fixed, and there’s no reason to think that a public discourse can’t modify a list that a humble philosopher suggests. Sen goes on to assert that particular lists of capabilities are relevant to certain uses, and so they cannot be coincident with human rights that he takes as somehow unified in justification and necessarily fixed across circumstances.⁴⁹ I have argued above that a conception of human rights might need to be flexible in exactly the way Sen paints capabilities as flexible—differently justified for different evaluative and normative purposes. If capabilities provide some foundation for human rights, then the conception of human rights that they generate could be similarly flexible in serving different normative purposes. This fact doesn’t on its own preclude broad agreement on a set of human rights derived from the principle of a capabilities set, but could allow for a robust and variable justification for human rights. While remaining mum on a list of capabilities and a list of human rights, essentially leaving the project to public reason, Sen’s theory of human rights may become a “lame contention” that agents merely have a responsibility to consider doing something about human rights, to use Pogge’s rather polemical words. Then agents have done their duty when they think about a human rights violation and decide not to do anything about it—this on its face lacks the basic force that human rights ought to have.⁵⁰ Nussbaum offers slightly more substantial hints—

⁴⁸ Sen, “Human Rights and Capabilities,” 158.

⁴⁹ *Ibid.*, 159.

⁵⁰ Pogge, “Comment on Mathias Risse: ‘A Right to Work? A Right to Leisure? Labor Rights as Human Rights’,” 43.

emphasizing ‘slightly’ to acknowledge that her arguments are widely considered overly vague and potentially quite contentious—at how the capabilities approach can fill out a conception of human rights.

We might evaluate Nussbaum’s system on the four components of a human rights conception suggested by Risse and discussed above. She presents a list of capabilities—these will serve as a principle to generate a list of human rights, in a sort of backwards way, beginning with a list of outcomes that list ought to produce rather than a procedure for generating the list. Her basis, coincidentally, relies in some degree on Grotius’ “On the Law of War and Peace” from which Risse derives common ownership, although the idea she extracts from it could be attributed to any number of political philosophers. Nussbaum shifts the focus in Grotius from ownership of the Earth to a perceived innate human desire or necessity to live in a community that secures human dignity for all.

This concept of human dignity, also perhaps termed as what it is to live a fully human life, is enumerated in terms of limits and capacities constituting what she’s (perhaps inappropriately) termed an Aristotlean approach, including ten basic features of humans that provide a sort of basis for the list of capabilities itself: mortality, the body as universal and bodily needs as a result (including sexual desire!), cognitive capability, early development, practical reason, affiliation, relatedness with other species, play, separateness, and strong separateness.⁵¹ I don’t want to delve into the contentiousness of these principles of what it is to be human, but there is some deep concern raised by Bobonich in

⁵¹ Nussbaum, “Social Justice and Universalism: In Defense of an Aristotelian Account of Human Functioning,” S55.

his response to Nussbaum's argument about their justification. Nussbaum and Sen present the idea that moralities and mythologies might yield such a set of principles in some form of overlapping consensus, but this step seems extraneous to me, even if it isn't likely to yield a sufficiently compelling account of humanness.⁵² Beitz raises a series of very serious worries about the groundings for Nussbaum's system and any naturalistic theory, and I admit that his objections are compelling and that Beitz's practical conception of human rights is difficult to disagree with.⁵³ Even so, I remain confident that there will be a way to solve these difficulties, or simply acknowledge them and maintain that a naturalistic account does the best job of justifying the sort of positive duties that we've seen may be most effective given the arguments above. In a deep way, this approach is philosophically unsatisfying, but there are a few reasons, loosely related to Richard Rorty's sentimentalist view that most writers make a point to mention and deride, that give us some justification to be somewhat unsatisfied in the interest of maintaining an intuitive view of human rights that has some prospect of justifying institutional duties of assistance to the poor.

The roughly Aristotlean (or, should we say, Nussbaumian?) approach yields positive duties in much the same way that orthodox theories of human rights do, and yet Nussbaum sketches an argument for mitigating the standard objections to those duties through institutionalization. Once a set of universal essential human traits are identified, this generates a moral demand equally upon

⁵² Sen, "Human Rights and Capabilities," 162. Sen at least makes an extensive case for the amenability of Indian thought to his conception of human rights as capability-freedoms in *The Argumentative Indian*.

⁵³ Beitz, *The Idea of Human Rights*, 52-68.

every individual to help provide for every other individual's realization of a set of capabilities generated by the essential human characteristics agreed upon. I hardly need to rehearse the issues generated by this fairly standard move of individual universal obligations—the most important problem is that it seems impossible under such a scheme to properly aggregate individual duties in order to make sense of the responsibilities of redistribution.⁵⁴

In later work, Nussbaum sketches how such an argument might go, and this allocation of responsibility seems remarkably amenable to the concerns of Risse and Pogge above. It could avoid the intermediary fault lines in their arguments, and if we can trust in a solution to the foundational worries about the approach, this version of duties of assistance has the potential to generate real change in the actualization of human rights focused aid. As a first step, each individual acting to discharge her responsibility toward ensuring capabilities would obviously generate massive confusion. It then makes sense for individuals to delegate their individual responsibilities of assistance to institutions of which they are aggregate parts. A concern of fairness also plays into this institutionalization of individual naturalistic responsibilities, since morally aware individuals will end up contributing more assistance than moral ignoramuses. If the responsibilities are aggregated into institutional responsibilities, this evens out. As a final move, if an obligation to promote capabilities devoured the lives of those on whom the obligation falls, the whole approach would lose its grip on what it is to be human, since the wealthy would then be denied their own

⁵⁴ Bobonich, "Internal Realism, Human Nature, and Distributive Justice: A Response to Martha Nussbaum." Bobonich adduces powerful arguments to this effect.

capabilities in ensuring the capabilities of the poor. With these instrumental concerns about the allocation and discharge of duties of assistance, Nussbaum more or less stipulates that institutions should take on a responsibility to promote capabilities and therefore human rights that is aggregated from a naturally individual array of responsibilities. This is in concord with either Pogge's or Risse's system, and while the argument that Nussbaum gives is rather general, I see no reason why it isn't a compelling grounds for further specification of how states and the international community ought to discharge those aggregate responsibilities.⁵⁵ The domestic case is simple, Nussbaum states—constitutional institutions are responsible for guaranteeing the capabilities sets of a state's citizens. She prescribes a list of ten principles for the global order that ought to discharge these collective responsibilities at the international level, without really arguing for them. I see no reason to object to the principles, and some are particularly insightful—the international order ought to focus on education as primarily responsible for the fulfillment of all capabilities per Rorty's prescription to raise sentiments.

The upshot of this argument for Nussbaum is that her list of basic capabilities are proposed as purely instrumental requirements on the structure of constitutions. As long as the capability list is agreeable enough—through some consensus process, presumably, the list is seen as a guide for domestic policy. We can see this as a human rights requirement as well—if the list is informed or informs international human rights as Nussbaum seems to argue, the capabilities

⁵⁵ Nussbaum, "Beyond the Social Contract: Capabilities and Global Justice," 14-16.

list so conceived acts as a guide on domestic political structures to respect human rights and concurrently holds states as the chief guarantors of human rights.

Polly Vizards' "Poverty and Human Rights" outlines Amartya Sen's contributions to this project, and is worth mentioning for how she sees how a capabilities outlook can inform a "working model" of human rights much in the vein of a rights-based approach that is has been recently adopted by the UN and a number of prominent transnational NGOs.⁵⁶ She points out that neither Nussbaum nor Sen ever offers a sufficiently specific distribution of duties of assistance in their ethical systems, and so a capabilities perspective needs some further argument to tack this down. Vizard, in the end, suggests that the international human rights framework as it is goes a long way to provide that supplemental specification of duties, and I find this proposal compelling—Vizard essentially combines Nussbaum's idea of capabilities with an inherently practical (she uses "pragmatic") conception of human rights. The list of human rights in treaties and practice gives a basis on which we can derive some agreement about the basic characteristics of human dignity or human functioning without such a metaphysically heavyweight commitment as the roughly Aristotlean program. These capabilities still play the same role in generating collective positive duties of assistance and a similar argument for their institutionalization applies.⁵⁷

⁵⁶ Note the UN declaration on the Right to Development: <http://www.un.org/documents/ga/res/41/a41r128.htm>, and the NGO ActionAid's approach outlined here:

<http://www.actionaid.org/assets/pdf/RBA%20paper%20FINAL.pdf>

⁵⁷ Vizard, *Poverty and Human Rights: Sen's "Capability Perspective" Explored*, 240-247.

Vizard's proposal has the potential to diffuse objections about the Aristotlean commitment that Nussbaum makes to specifying the essential features of human life. Without exploring this route further, it's worth taking the intersection of Nussbaum's concerns about pity and Aristotleanism and Rorty's sentimentalist position seriously. In his "Human Rights, Rationality, and Sentimentality," Rorty makes the claim that human rights are essentially a product of increased sentiment in the wake of the Second World War, and asking questions about their ontology or further justification is more or less silly.⁵⁸ This obviously gives cause for most philosophers writing books about that very justification to throw out Rorty's argument or merely mention it in passing, but there is some value to the insight. Nussbaum suggests that without some conception of shared humanity—seemingly the very definition of sentimentality—grounded in commitments on what it takes to be fully human, pity isn't possible.⁵⁹ Given the clear difficulties and diversity of approaches to justifying human rights, and Risse's conjecture that a singular best philosophical account may be impossible, it's worth taking these concurrent claims seriously. There is at least some truth to the claim that human rights rely on shared sentiment, and the claim that the advance of support for whatever they demand—institutional change, redistributive measures, domestic legislation ensuring some egalitarian access to services and goods—will necessarily depend on increased educational capacity. If we take Nussbaum's point seriously as well, that this sentiment depends on some agreement on what it is to be human and that the

⁵⁸ Rorty, "Human Rights, Rationality, and Sentimentality."

⁵⁹ Nussbaum, "Beyond the Social Contract: Capabilities and Global Justice," S70.

recognition of these features will disallow a rational agent from discounting the humanity of even distant others upon appropriate reflection, we suddenly have a compelling argument for a commitment to some idea of basic human characteristics derived from a recognition of the value of human rights. If this argument is coherent—stepping from human rights to sentimentality to some vaguely Aristotlean argument about flourishing to a good reason to accept such a commitment—we may have a reason to “point out that all justification ends somewhere” and more satisfying accounts of a flourishing basis for human rights aren’t necessary. Bobonich describes this response as arbitrary and forecloses the hopes of widespread agreement on the basis for human rights or distributive justice. The latter point may just be the case, but I’ll suggest (controversially, and I admittedly cannot give a deep argument for this) that a suitably basic account of human capabilities doesn’t have to be so agreeable across cultures as long as it is conceivably demandable by those who want the capabilities implied.

I don’t want to suggest that Rorty’s argument is the end of the game with human rights and we should simply focus on education to achieve a progressive acceptance of human rights norms. There is some value to giving moral arguments for the basis of redistributive duties, and grounding states’ obligations to citizens in capabilities-grounded human rights language gives an extremely useful guide for development policy. Without engaging the wide range of arguments against Nussbaum’s commitment to some conception of what it is to be human, I submit that there is plausibly some way to justify such a list, whether it be through some broad consensus, pragmatic interpretation of existing human

rights law, or other commitments to the instrumental role of common humanity in the sentimentality necessary to any actualization of human rights. The imposition of collective responsibilities generated by this sort of human rights conception can plausibly conform to the pragmatic suggestions of both Risse and Pogge while maintaining a focus on the real experience—the attainment of capabilities—of those the duties exist to protect. I see several ways in which this approach can actualize international duties of assistance informed by the discussion of Risse above. International actors, represented by aggregative institutions such as states, corporations, and global governance bodies, will have a duty to support poor countries in their efforts to juridify and implement schemes that help realize human rights in ways that expand the capabilities of the poor. The exercise of this duty can take a number of forms. Official development assistance can be spent on civil society NGOs that play an instrumental role in connecting the grassroots with such development initiatives. Domestically, rich states must focus on capacity building in education to raise sentimentality in rich citizens as Rorty suggests, so that those citizens will be more inclined to accept progressive change of the international and state order. Perhaps through such a process we can have hope for Pogge’s suggested reforms. There is also a human rights generated responsibility for rich states to realize policies domestically that can serve as examples for poor states—this somewhat convoluted path to realize institutional duties of assistance is also crucial for developing a discourse on how to integrate human rights/capabilities into constitutional structures the world over.

I've argued that at least two approaches to fighting poverty with human rights, Pogge's institutional account and Risse's common-owner membership account, distort valuable aims of human rights practice and are crucially open to severe empirical concerns in the chain of argument from theory to tangible outcomes. Some more orthodox, naturalistic account of human rights may have the potential to get from a commitment to some account of human flourishing in the vein of Nussbaum's list to tangible outcomes with an argument from collective responsibilities. This account avoids concerns about a basis in membership by instead basing human rights in commitments to facts about the human person or the nature of sentimentality and human rights. Either of these bases may be contested, but I submit that such an admittedly traditional account of human rights will be the best way to justify the sort of assistance that will best benefit the poor. I do not intend for this account to be exclusive—Pogge gives an extremely compelling system for motivating global institutional reform, and Risse's system offers powerful reasons to ground human rights-based assistance in institutional capacity building. Other conceptions of human rights may best justify military intervention, or serve other aims commonly required of human rights. I intended to come up with a justification for a human rights based approach to poverty and development, however, and I ultimately must return to an old-fashioned, somewhat unsophisticated commitment to the human person and capabilities to deliver a rich basis for fighting poverty based on human rights. The final section will discuss in broad outline a particular such institutional scheme in

India to suggest how a state and the international community can actualize such an account.

6. NREGA: toward rights-based development

In 2005, the government of India passed the National Rural Employment Guarantee Act (NREGA.) It has become the largest social welfare scheme in the world, costing around \$30 billion since its inception, and even though it has serious difficulties in nationwide implementation, the Act has become a crucial asset for the rural poor.⁶⁰ I'll begin with an outline of the complicated guidelines in the Act while avoiding much of the contention about how it is being implemented, and consider how the act falls short of a true human rights guarantee in light of tradeoffs with bureaucratic legislators and resource constrictions. As a result, NREGA shouldn't really be considered as a guarantee of a human right to work, but rather as an instrumental step in guaranteeing a other human rights/capacities through a conditional basic income. This is not disastrous for theoretical implications of NREGA, since the interpretation of the right to work itself is open to a great deal of controversy centering around whether to treat "work" as a verb or a noun, corresponding to it being an employment guarantee as NREGA was originally envisioned or a more broad concept encompassing union rights and restrictions on employer practices. However we choose to consider NREGA and its intersection with human rights norms theoretically, it suggests three aspects of the human rights framework I've emphasized above—it centers guarantees in the state, implicitly conceptualizes well-being as more than simply resource baskets, and provides opportunities for international actors to discharge duties of assistance in support of institutional growth through grassroots action.

⁶⁰ Jeelani, "NREGA's Reality Check."

NREGA was passed in 2004, and was a crucial part of the Congress party's platform that drove them to victory in that year's national elections. The initial draft of the bill was generated by the National Advisory Council, which until recently had the economist and frequent Sen collaborator Jean Dreze as a member. That version of the bill demanded year-round employment at a minimum wage for all Indians, but concerns about the astronomical potential cost to the central government (outlay, in the Indian English idiom) caused a great restriction of the bill as it passed through bureaucrats in the legislature. Dreze had to enlist the hugely influential Sonia Gandhi to get the act passed at all, and it ended up extremely convoluted (like most Indian legislation—the Indian constitution is the longest written constitution in the world) and stopped short of a universal employment guarantee. A national consortium of activists known as the Right to Food Campaign played a key role in this process, and today is the main resource for lobbying and implementation of the Act. They provide an excellent summation of the entitlements and structure of NREGA that I will rehearse below.⁶¹

In simplest outline, NREGA guarantees every rural household 100 days of unskilled work each year at a state-mandated minimum wage, to be provided within 15 days of a request for such work. The funding comes from the central government while states are responsible for implementing the scheme—the Act is the legislative basis for the practical Scheme—and the structure aims to guarantee that the work be delivered in a timely manner by requiring that states pay an unemployment allowance if work is not provided within 15 days. Rather than a

⁶¹ Right to Food Campaign, "A Primer on the EGA."

top-down imposition of a public works scheme on villages, those in need must request work, and this is what makes NREGA unique and rich under the theory sketched above. There is a huge array of measures intended to prevent “leakage” of funds, including the public posting of muster rolls and wages paid, as well as the crucial contribution of the Right to Information Act, which has become a huge asset in battling corruption all across rural India.⁶² The scheme is occasionally presented as a guarantee of a right to work, but the restrictions required as compromises preclude it from such a characterization.

Most obviously, the act only applies to rural households—it has nothing to do for the urban poor, unless we consider its effect on reducing rural-urban migration as a significant benefit in reducing competition in the underbelly of urban labor markets. The guarantee is also only for households, defined almost (although this is also complicated) as nuclear families. A sufficiently individual realization of a human right to work would guarantee each person work. The limitation to 100 days of work leaves the rest of the year unaccounted for, and disallows the sort of basic security of both non-pecuniary and cash benefits generated by a full-employment guarantee. In light of this restriction, we should view NREGA as a safety net in the event of unexpected contingencies such as drought or debt or sudden unemployment in a household. In this sense, NREGA is more like a conditional resource transfer than a work guarantee.⁶³ The conditions for this transfer are unique and interesting, and exemplify a rights-based approach to a state-sponsored redistributive mechanism.

⁶² Kapur, “Prying Open India’s Vast Bureaucracy.”

⁶³ Chakraborty, “Social Protection Policies in South Asia,” 6.

Other forms of social protection in India, such as subsidized food distributed through the Public Distribution System, rely on targeting using a Below Poverty Line measure. Based on a fantastically complicated census, some families earn BPL cards that entitle them to discounted essential goods and others don't. This generates huge problems, including inaccuracies in the census, corrupt practices such as illegitimate distribution or a secondary market in BPL cards, and an inherently arbitrary determination of where the line lies. This empirical result echoes some objections made to the capabilities-based schema for distributive justice on which Pogge bases much of his critique while he defends a subtle resourcist approach to redistribution.⁶⁴ NREGA avoids this critique while still serving an instrumental role in securing capabilities, in light of the perspective on development and human rights I've sketched above. At no point in the allocation of NREGA work does a BPL status come in. By mandating that the work is physical and pays only minimum wage, the poor self-select to take up NREGA work. Then the poor decide whether or not they need to receive assistance in meeting their needs, and the problems associated with assessing how to allocate redistributive payouts doesn't arise. We can view this resource transfer as a capability ensuring measure by viewing the cash paid as instrumental to securing access to food or freedom from debt or any of the other capabilities enumerated in the basic list. The advocacy for NREGA by the Right to Food campaign further suggests that the legislation is an experiment in seeing how the government can handle such self-targeted rights-based development initiatives. This is precisely the sort of institution that Risse advocates as long-lasting and indigenously

⁶⁴ Pogge, "Can the Capability Approach Be Justified?".

supported—the Act has no effect at all if no one asks for work, and crucially relies on civil society to function properly. It also has the side-benefit of building up badly-needed infrastructure that can have lasting benefits for the poor population. It seems possible that NREGA, as an innovative and potentially successful instrument to helping rural Indians secure human rights, can be a grounds for some discharge of capacity-building guarantees that I've argued for above.

Public awareness is crucial to the success of such a self-targeted scheme—no one can ask for work that they are entitled to unless they know how to ask and that they have the entitlement in the first place. International actors can participate by funding local organizers, like Pratirodh, who act as mediators between the poor and the state. There are some skepticisms to this approach to development, such as an open concern about whether such workers will not themselves be corrupt in the presence of foreign money and whether or not such work can be evaluated for effectiveness, but I think it's plausible to hold that international actors, whether through official development assistance or individual contributions, can help encourage this sort of action. A major problem with NREGA's implementation is the technical design of useful works within 5 km of the village—purely make-work, like digging holes and filling them in or building roads sure to wash out in a matter of months, will have little lasting effect and cause the non-pecuniary benefits such as engagement with meaningful work to disappear. International actors can further help with technical support, such as GIS data to plan projects or assisting with design or providing decent tools for workers to use. The example-

setting duty might be discharged by using laws such as NREGA to inspire legislation even in rich countries—such a rights-based public-works program in the US would potentially have a tremendous impact on reducing poverty, even though poverty here is nowhere near as severe as it is in the Indian countryside. The enactment of such legislation could add to a knowledge base of good practice in other countries, and encourage the expansion of states guaranteeing human rights through well-designed, people-focused legislation.

NREGA isn't properly a guarantee of a human right to work, but it is a compelling example of a state using human rights principles of grassroots engagement and the input of the poor to generate an effective redistributive mechanism that has the potential to have a serious impact on securing a basic set of capabilities for a majority of India's rural poor. If it truly adhered to human rights principles, it would be more universal both in scope and days of work guaranteed, and the continued pressure on the central government inspired by those principles may one day deliver a legislatively guaranteed right to food that would dramatically change the situation of the currently endemically undernourished poor. Arguably access to proper nutrition is basic to all other capabilities, and this eventual goal should be prime in developing the tangible realization of a rights-based approach to human development. International actors may discharge their duties of assistance most effectively by supporting these legislative efforts and the implementation of the schemes in smart ways. Assistance so delivered is durable, effective, and reinforces the primary role of domestic institutions in guaranteeing human rights.

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Capstone Summary

In this project, I set out to examine an approach to human rights informed by my experiences studying international development in India. Having directly interacted with the rural poor in Rajasthan, I felt it necessary to theoretically explore the groundings of a human rights conception that would be at once relevant and practically beneficial for those people. In so doing, I read many accounts of human rights, deepening coursework I took on the philosophy of human rights in fall 2009, and arrived at conclusions at once pragmatist and committed to a traditional, orthodox account of human rights.

Rather than search for a philosophically best account, I proceeded with the idea that a particular conception of human rights is the best account for a particular end. Some conceptions give an account of how human rights justify military intervention. Some aim to explain what philosophically justifies the array of international law instruments and international institutions that make up the human rights regime. Some look to human rights as a prescription for forming a more just global society. I could go on, but I set out to see how human rights could justify tangible action to combat the pervasive and morally repugnant state of global poverty, and examine how such a conception might inform the exercise of international aid in domestic law.

The project begins with a lengthy discussion of one of the most influential thinkers in the discourse, Thomas Pogge. His human rights system gets off the ground with the idea that the amount of death caused by preventable poverty is a

equivalent to a moral disaster—so many people die each year due to extreme poverty that there must be something deeply wrong about the way we’ve structured the world. Pogge sees human rights as demands on the structure of a global society that he sees as inherently unjust, since it perpetuates structural impositions on poor countries and the poor themselves that have no normative justification. I find Pogge’s work extremely interesting and compelling, and the amount of time I spend discussing his views is a tribute to their influence. I raise a series of worries about the details of Pogge’s approach. They mostly center around an intermediary move in his argumentative structure. Pogge stipulates that human rights are essentially negative—that is, they are claims to refrain from doing something. In order to get tangible effect from such rights, he must show that the people in a position to give rectification for violating these restraints on just action are morally culpable for harming the poor. There are serious empirical issues with establishing harm at all.

I transition from discussing Pogge’s work into some of the arguments Mathias Risse raises against this idea of harming. These focus on empirical issues in showing how a benchmark for harm might be specified. To make a judgement that harming is going on, it must be possible to state a benchmark of something below which there is no harm going on—we must be able to compare a harmed state to an unharmed state. Risse considers several possibilities that Pogge might use to specify the harm he claims, and rejects them all. The upshot of this exchange for my argument is that specifying any such benchmark may turn out to be impossible if not much more difficult than Pogge seems to let on.

Risse suggests that some harm is going on from the rich to the poor, but it is very restricted. He posits an institutional thesis from development economics to motivate this, which states that the source of prosperity is the quality of institutions in any society. As a result, rich countries harm poor ones only by not helping poor countries build up stronger institutions. The ability rich countries have to do this is extremely limited by the nature of institutions and the nature of aid. I raise some issues for Risse's approach here, mostly that it is too restrictive in assigning foreign aid—if international actors may only help strengthen local institutions, there seems to be no way to address the very urgent problem of poverty. Instead, I subscribe to an expanded notion of the institutional thesis, acknowledging both that a wide array of factors play into the efficacy of institutions and that a wide array of factors plays into causing poverty. Both duties of immediate redistributive transfers and institutional capacity building should be endorsed by a conception of human rights—there's no reason to choose one or the other, and sufficiently generous readings of Pogge and Risse might yield some common ground.

I move from here to consider Risse's particular derivation of human rights. It depends on natural rights—those possessed by natural facts about human's moral status—that secure a claim of every human to the basic goods necessary for subsistence. These derive from a notion of common ownership of the Earth resurrected from 17th century political philosophy. From these, Risse argues that the imposition of a global order, defined by the continuous territorial control of states and the global governance institutions that regulate their relations, causes

each human to enjoy status in that global order. Since states implicitly restrict the natural rights each person has to fulfilling basic needs with original resources, human rights are necessary to adjust for this restriction. These human rights are essentially associative rights gotten in virtue of the contingent fact of membership in the global order. I argue that the global order may not be as homogenous as Risse claims, and may not ever be. Further, resting human rights on a concept of membership, however thin, may inappropriately limit that human rights conception's capability to combat the exclusion of people who most need human rights secured.

Having found these two recent and innovative approaches to human rights unsatisfying, I turn to an orthodox account of human rights that grounds them in facts about what it is to be human. Much of the philosophical fervor around human rights explicitly sets out to avoid such commitments, but I find Martha Nussbaum's roughly neo-Aristotlean approach that has human capabilities both as the ends and grounds for human rights compelling enough to suggest it as an alternative to the above views. Capabilities shift a focus away from basic goods to the question of what a person can do and be. In coming up with a list of capabilities, Nussbaum makes normative claims about what it is to be human. This principle generates a list of essential capabilities—things that are morally valuable and essential to human life—from which we can derive an intersection with human rights. Capabilities both give the desired outcome of human rights and a justification for their existence. The assignment of duties to realize human rights on this approach follows a standard progress from universal individual

responsibilities—that everyone has a duty to everyone else to ensure that they have the capabilities deemed valuable—to institutionalization via collective responsibilities. I argue that this approach can yield the responsibilities of aid that were deemed important by Risse and Pogge with less-objectionable middle steps in the argument. In response to the concern that a justification for an account of what it is to be human won't be forthcoming, I introduce Rorty's notion that human rights are purely a function of human sentiment—roughly, the capability to empathize and feel compassion for even distant others—and link that to Nussbaum's insistence that a commitment to an account of humanness is required for any sentiment at all. This allows the argument to avoid justification in a convoluted way—human rights uncontroversially depend on sentiment, and sentiment depends on an account of human functioning. The mutuality of these two claims is justification enough. The institutionalized collective duties of assistance can and ought to be exercised in ways concordant with Risse's admonitions about institutional support and Pogge's about institutional reform.

I close the paper with a discussion of the recently enacted National Rural Employment Guarantee Act in India. I point out that it is not properly a guarantee of a right to work, but serves as an instrumental policy in guaranteeing a more fundamental capability to subsistence by acting as a conditional redistributive mechanism. NREGA is an important example of a domestic institutional innovation that puts power in the hands of the poor and ensures capabilities universally. By being self-targeted, it avoids some of the issues generated by a need to evaluate who has what capability deficits in that the poor choose what

assistance they need. International actors have an opportunity to help with NREGA and other similar institutional innovations through a process of capacity building in line with the discharge of the collective duties generated by the preferred conception of human rights argued for above.